रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 29] नई दिल्ली, जुलाई 13—जुलाई 19, 2014, शनिवार/आषाढ़ 22—आषाढ़ 28, 1936
No. 29] NEW DELHI, JULY 13—JULY 19, 2014, SATURDAY/ASADHA 22—ASADHA 28, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 11 जुलाई, 2014

का.आ. 1996.—केंद्रीय सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा (5) की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उत्तर प्रदेश राज्य सरकार के गृह (पुलिस) अनुभाग-3, लखनऊ की सहमति से दिनांक 12 सितम्बर, 2013 की अधिसूचना सं. 3291(1)/पी/VI-पी-3- 2013-15(20)पी/2013 द्वारा शशांक यादव की मृत्यु के संबंध में पुलिस स्टेशन सेक्टर-24, नोएडा, जिला गौतम बुद्ध नगर, उत्तर प्रदेश में भारतीय दण्ड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-बी, 201 एवं 302 के अंतर्गत दर्ज अपराध सं. 171/2013 और उससे संबंधित प्रयासों, दुष्प्रेरण, षड्यन्त्रों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापन की शक्तियों एवं न्यायाधिकार का विस्तार संपूर्ण उत्तर प्रदेश राज्य पर करती है।

[फा. सं. 228/73/2013-एवीडी-II]
राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

New Delhi, the 11th July, 2014

S.O. 1996.—In exercise of the powers conferred by sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Uttar Pradesh, Home (Police) Section-3, Lucknow vide Notification No. 3291(1)P/VI-P-3-2013-15(20)P/2013 dated 12th September, 2013, hereby extends powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Uttar Pradesh for investigation of Case Crime No. 171/2013 under sections 120-B, 201 and 302 of the Indian Penal Code, 1860 (Act No. 45 of 1860) registered at Police Station Sector-24 Noida, District Gautam Buddha Nagar, Uttar Pradesh reating to death of Shashank Yadav and attempts abetments and conspiracies in relation to the above mentioned case.

[F. No. 228/73/2013-AVD-II]
RAJIV JAIN, Under Secy.

अंतरिक्ष विभाग

बेंगलूर, 1 जुलाई, 2014

का.आ. 1997.—केंद्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग, नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में एतद्द्वारा अन्तरिक्ष विभाग के निम्नलिखित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती हैं।

विद्युत प्रकाशिकी तंत्र प्रयोगशाला
पहला स्टेज, पहला क्रॉस
पीण्या औद्योगिक एस्टेट
बेंगलूर–560058

[सं. 8/1/10/2011–हिं]
एन. पट्टाभि रामन, अवर सचिव

DEPARTMENT OF SPACE

Bangalore, the 1st July, 2014

S.O. 1997.—In pursuance of sub-rule (4) of the Rule 10 of the Official Language (use for official purpose of the Union) Rule, 1976, the Central Government, hereby notifies the following Office of the Department of Space, whereof more than 80 percent staff have acquired the working knowledge of Hindi.

Laboratory for Electro-Optics Systems (LEOS)
1st Stage, 1st Cross,
Peeniya Industrial Estate
Bangalore-560058

[No. 8/1/10/2011-H]
N. PATTABHI RAMAN, Under Secy.

उपभोक्ता मामले, खाद्य एवं सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1998.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उपनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाईसेंस प्रदान किए गए हैं :--

क्र. सं.	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनु	वर्ष
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	2890574	03 जून, 2014	मैसर्स सोमनाथ इन्जीनियरिंग सर्वे नं. 18/1 पी–2 प्लॉट नं. 22, परीन फर्नीचर के पीछे रामेश्वर इन्डस्ट्रीयल एरिया, गोंडल रोड़, वावडी, राजकोट, गुजरात–360004	निमज्जनीय पम्प सेट की विशिष्टि	8034	0	0	2002
2.	2890675	03 जून, 2014	मैसर्स एक्टिव पोलीमर्स प्राईवेट लिमिटेड प्लॉट नं. 327, जी. आई. डी.सी. II, साबलपुर, जिला जुनागढ़, गुजरात–362001	सिंचाई उपस्कर–स्प्रिंकलर पाइप–विशिष्ट भाग 2 सहज संयोजी पालीएथिलीन पाइप तथा फिटिंगस	14151	2	0	2008
3.	2891879	16 जून, 2014	मैसर्स फेबटेक केबल्स प्राईवेट लिमिटेड प्लॉट नं. 19, 20, 22, 23, 26, 27, सर्वे नं. –39/3, नवरंग इन्डस्ट्रीयल एस्टेट,	कॉसलिंक्ड पॉलिथीन से रेधित थर्मो प्लास्टिक के खोल चढी के केबल भाग 1, 1100वो. टक कार्यकारी वोल्टा के लिए	7098	1	0	1988

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
			होटेल क्रिष्ना पार्क के पीछे, वावडी, जिला राजकोट, गुजरात–360004					
4.	2891980	17 जून, 2014	मैसर्स रघुवीर केबल जय इन्ड. पार्क शेड नं. 2, सत्यनारायन वे ब्रिज के पीछे, गोंडल रोड, वावाडी, राजकोट, गुजरात–360004	1100 वोल्ट तक की कार्यकारी वोल्टता के लिए पीवीसी रोधित केबल आईएस	694	0	0	1990
5.	2892174	20 जून, 2014	मैसर्स निजानन्द पाईप्स व फिटिंग्स प्राईवेट लिमिटेड, सर्वे नं. 28/29 प्लॉट नम्बर 72, 73, 74, 1, 2, 29, 30, शिवम इन्डस्ट्रीयल एरिया, ओम कास्टिंग के पास, फाल्कान पम्प्स प्रा. लि. के पीछे गोंडल रोड, वावडी, जिला राजकोट, गुजरात–360005	तप्त और अतप्त पेय जल वितरण व्यवस्था के लिए क्लोरीनीकृत पॉलीविनायल क्लोराइड (सीपीवीसी) पाइप	15778	0	0	2007
6.	2893075	26 जून, 2014	मैसर्स जिन्दल शॉ लिमिटेड गॉव सामघोघा, मांडवी परागपुर रोड, तालुका मुन्द्रा जिला कच्छ, गुजरात–370415	स्पैरल वैल्डिड पाईप – विशिष्ट	5504	0	0	1997

[सं. केन्द्रीय प्रमाणन विभाग/13:11]

सं. चतुर्वेदी, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 8th July, 2014

S.O. 1998.—In pursuance of sub-regulation (5) of Regulation 4 of the Bureau of Indian Standards (Certificate) Regulation 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule:—

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and address of the party	Title of the Standard	IS No.	Part.	Sec.	Year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	2890574	03/06/2014	M/s. SOMNATH ENGINEERING Survey No. 18/1, P-2, Plot No. 22, B/h Pain Furniture, Rameshwar Industrial Area, Gondal Road, Vavadi, Rajkot, Gujrat-360004	Sumersible Pumpsets-Specification	8034	0	0	2002

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2.	2890675	03/06/2014	M/s. ACTIVE POLYMERS PVT. LTD. Plot No. 327, G.I.D.C.II, Sabalpur, District : Junagadh, Gujrat-362001	Irrigation Equipment-Sprinkler Pipes-Quick Coupled Polyethylene Pipes	14151	0	0	2008
3.	2891879	16/06/2014	M/S. FABTECH CABLES PVT. LTD. Plot No. 19, 20, 22, 23, 26 & 27, Survey No.-39/3, Navrang Industrial Estate, Behind Hotel Karishna Park, Vavadi, District : Rajkot, Gujrat-360004	Crosslinked Polyethylene insulated thermoplastic sheathed cables: Part 1 for working voltage upto and including 1100 V	7098	0	0	1988
4.	2891980	17/06/2014	M/S. RAGHUVIR CABLE Jay Ind park, Shed No. 2, B/H Satyanarayan Weigh Bridge, Gondal Road, Vavdi, Rajkot Gujrat-360004	PVC Insulated cables for working voltage upto and including 1100 V	694	0	0	1990
5.	2892174	20/06/2014	M/s. NIJANAND PIPES AND FITTINGS PVT. LTD. Survey No. 28/29, Plot No. 72, 73, 74, 1, 2, 29, 30, Shivam Industrial Area, Near Om Casting, Behind Falcon Pumps Pvt. Ltd., Gondal Road, Vavdi, District Rajkot, Gujrat-360005	Chlorinated PVC Pipes for Portable Hot and Cold Water Distribution Supplies	15778	3	0	2007
6.	2893075	26/06/2014	M/S. JINDAL SAW LIMITED Village Samghogha, Mandvi Paragpur Road, Taluka Mundra, District kachchh, Gujrat-370415	Specification for Spiral welded pipes	5504	0	0	1997

[No. CMD/13:11]
S. CHATURVEDI, Scientist 'F' & Head

नई दिल्ली, 8 जुलाई, 2014

का.आ. 1999.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उपनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके नीचे अनुसूची में दिए गए हैं, के लाइसेंस रद्द किए गए हैं :--

अनुसूची

क्र. सं.	लाइसेंस संख्या	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्दीकरण तिथि
1.	3736670	मैसर्स रोयल बेवरेजीस प्लॉट नं. 29, वार्ड नं. 6, इंडस्ट्रीयल एरिया, गुरूद्वार के पास गांधीधाम, जिला कच्छ गुजरात–370201	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा),	09 जून, 2014

[सं. केन्द्रीय प्रमाणन विभाग/13:11]
स. चतुर्वेदी, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 8th July, 2014

S.O. 1999.—In pursuance of sub-regulation (6) of Regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each:—

SCHEDULE

Sl. No.	Licence No. CM/L-	Name & Address of the Licensee	Article/ Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of Cancellation
1.	3736670	ROYAL BEVARAGES, Plot No. 29, Ward-6, Industrial Area, Near Gurudwara, Gandhidham, District Kachchh, Gujarat-370201	Packaged Drinking Water (other than Packaged Natural Mineral Water) – Specification	09-06-2014

[No. CMD/13 : 11]

S. CHATURVEDI, Scientist 'F' & Head

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 30 मई, 2014

का.आ. 2000.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1, दिल्ली के पंचाट (संदर्भ संख्या 167/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/05/2014 को प्राप्त हुआ था।

[सं. एल–42011/66/2012–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 30th May, 2014

S.O. 2000.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 167/2012) of the Central Government Industrial Tribunal/Labour Court 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the The Commissioner, Municipal Corporation of Delhi, Delhi and their workman, which was received by the Central Government on 30/05/2014.

[No. L-42011/66/2012-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, DELHI

I.D. No. 167/2012

Shri Ishwar Singh
S/o Shri Jai Lal,
Through The General Secretary,
Nagar Nigam Karamchari Sangh,
Delhi Pradesh, P-2/624, Sultanpuri,
Delhi.

...Workman

Versus

The Commissioner,
Municipal Corporation of Delhi,
Town Hall, Chandni Chowk,
Delhi-110006.

...Management

AWARD

A chowkidar employed by Municipal Corporation of Delhi (in short the Corporation) claimed payment of overtime allowance, since he was made to work beyond normal duty hours. His claim was not conceded to by the Corporation. He approached the Nagar Nigam Karamchari Sangh (Delhi) (in short the union) for redressal of his grievances. The union served notice on the Corporation seeking overtime allowance for duties performed in excess of normal working hours, wages for weekly holidays, gazetted holidays and casual leaves, which notice was not responded to. A dispute was raised before the Conciliation Officer. Since the Corporation contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the

Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-42011/66/2012-IR(DU) dated 16/21.11.2012, with following terms:

> "Whether the action of the management of Municipal Corporation of Delhi (MCD) in denying encashment of wages of weekly holidays, gazetted holidays and casual leave which are not availed by the workman, Shri Ishwar Singh, S/o Shri Jai Lal, ex-Chowkidar as the same are spent on duty during the period of service rendered by the workman with the MCD is justified or not? If not, what relief the workman is entitled to and form which date?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions, so given, the Chowkidar, namely, Shri Ishwar Singh opted not to file his claim statement with the Tribunal.

3. Notice was sent to Shri Ishwar Singh by registered post on 03.12.2012, calling upon him to file claim statement before the Tribunal on or before 02.01.2013. This notice was sent to him through the union, at P-2/624, Sultanpuri, Delhi, the address provided by the appropriate Government in order of reference. Neither the claimant nor the union responded to the notice, so sent.

4. Since none came forward on behalf of the claimant to file his claim statement, fresh notice was sent to him by registered post on 02.01.2013 calling upon him to file claim statement before the Tribunal on 29.01.2013. Notice was transmitted to the claimant by registered post on 31.01.2013 asking him to file his claim statement on or before 20.02.2013. Lastly, notice dated 22.02.2013 was sent by registered post commanding the claimant to file his claim statement before the Tribunal on or before 22.03.2013. Neither the postal articles, referred above, were received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notices were served upon the claimant. Despite service of these notices, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf.

5. Since onus of the question referred for adjudication was there on the Corporation, it was called upon to file its response to the reference order. Corporation filed its response, pleading therein that the dispute was not properly espoused by the union, hence liable to be rejected. It further asserted that the dispute has been raised at a belated stage, hence it became stale. The Appropriate Government cannot refer such a dispute for adjudication, as it has become stale. The dispute is liable to be rejected on this count also, claims the Corporation.

6. The Corporation projects that claimant was getting overtime allowance @ Rs.625.00 upto a maximum of 50 hours in a month in accordance with circular dated 15.03.1997. For work performed on Sundays and holidays, the chowkidars gets compensatory leave in lieu thereof, hence not entitled to overtime allowance. Chowkidars are entitled to 15 days casual leave, 3 national holidays and 6 other holidays of their choice in every calendar year. Their normal duty hours are 10 hours per day and previously chowkidars were entitled to 24 hours rest (one day) in fortnight. Now, a chowkidar is getting overtime allowance for 100 hours per month in accordance with circular dated 09.05.2011. Details of overtime allowance granted to the claimant from June, 88 to March, 2013 are annexed as Annexure C with the response. In view of these facts, claimant is not entitled to any relief, claims the corporation.

7. Arguments were heard at the bar. None came forward on behalf of the claimant to advance arguments. Shri Umesh Gupta, authorized representative, assisted by Ms. Jaishri, School Inspector, raised submissions on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

8. At the outset, it has been argued that the dispute has not acquired status of an industrial dispute since it has not been validly espoused by the union. For an answer, definition of the term industrial dispute is to be construed. For sake of convenience, definition of the term "industrial dispute", as defined by section 2(k) of the Industrial Disputes Act, 1947 (in short the Act).

> "(k) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

9. The definition of "industrial dispute" referred above, can be divided into four parts, viz. (i) factum of dispute, (2) parties to the dispute, viz.(a) employers and employers, (b) employer and workmen, or (c) workmen and workmen, (3) subject matter of the dispute, which should be connected with –(i) employment or non-employment, or (ii) terms of employment, or (iii) condition of labour of any person, and (4) it should relate to an "industry".

10. The definition of "industrial dispute" is worded in very wide terms and unless they are narrowed by the

meaning given to word "workman" it would seem to include all "employers", all "employments" and all "workmen", whatever the nature or scope of the employment may be. Therefore, except in the case where there can be a dispute between the employers and employers and workmen and workmen, one of the parties to an industrial dispute must be an employee or a class of employees. The first point, therefore, to be noted, perhaps self evident, is that the phrase "employer and workmen", the plural may include singular on either side or any permutation of singular or plural, the masculine including the feminine. In order, therefore, to determine as to whether a controversy or difference or a dispute is an "an industrial dispute" or not, it must first be determined whether the workman concerned or workmen sponsoring his cause satisfy the conditions of clause (s) of section 2 of the Act. Here in the case, the Corporation does not dispute that the claimant is workman within the meaning of clause(s) of section 2 of the Act.

11. The Apex Court put gloss on the definition of "industrial dispute" in Dimakuchi Tea Estate [1958 (1) LLJ 500] and ruled that the expression "any person" in clause (k) of section 2 of the Act must be read subject to such limitation and qualification as arise from the context, the two crucial limitations are (i) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to other, and (2) the person regarding whom the dispute is raised must be one for whose employment, non employment, terms of employment or conditions of labour, as case may be, the parties dispute for a direct or substantial interest. Where workman raised a dispute as against their employment, the person regarding whose employment, non-employer, terms of employment or conditions of labour, the dispute is raised need not be strictly speaking "workman" within the meaning of the Act, but must be one in whose employment, non-employer, terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest. The observations made by the Apex Court are to be extracted thus:

> "We also agree with the expression "any person" is not co extensive with any workman, particular or otherwise, equal with other, that the crucial test is one of community of interest and the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. Whether such direct or substantial interest has been established in a particular case will depend on its facts and circumstances."

12. In Kyas Construction Company (Pvt.) Ltd. [1958 (2) LLJ 660] the Apex Court ruled that an industrial dispute need not be a dispute between the employer and his workman and that the definition of the expression "industrial dispute" is wide enough to cater a dispute raised by the employer's workman with regard to non-employment of others, who may not be employed as workman at the relevant time. The Apex Court in Bombay Union of Journalist [1961 (II) LLJ 436] has observed that in each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of reference, the dispute was taken up as submitted by the union of the workmen of the employer against whom, the dispute is raised by an individual workman or by an appreciable number of workmen. In order, therefore, to convert an individual dispute into an industrial dispute, it has to be established that it has been taken up by the union of employees of the establishment or by an appreciable number of the employees of the establishment. As far as union of the workmen of establishment itself is concerned, the problem of espousal by them generally presents little difficulty, since such workmen who are members of such unions generally have a continuity of interest with an individual employee who is one of their fellow workman. But difficulty arise when the cause of a workman, in a particular establishment is sponsored by a union which is not of the workmen of that establishment but is one of which membership is open to workmen of their establishment as well as in that industry. In such a case a union which has only microscopic number of the workmen as its member, cannot sponsor any dispute arising between the workmen and the management. A representative character of the union has to be gathered from the strength of the actual number of co-workers sponsoring the dispute. The mere fact that a substantial number of workmen of the establishment in which the concerned workman was employee were also members of the union would not constitute sponsorship. It must be shown that they were connected together and arrived at an understanding by a resolution or by other means and collectively submitted the dispute.

13. The expression "industrial disputes" has been construed by the Apex Court to include individual disputes, because of the scheme of the Act. In Raghu Nath Gopal Patvardhan [1957(1) LLJ 27] the Apex Court ruled as to what dispute can be called as an industrial dispute. It was laid thereon that (1) a dispute between the employer and a single workman cannot be an industrial dispute, (2) it can not be per-se be an industrial dispute but may become if it is taken up by a trade union or a number of workmen. In Dharampal Prem Chand [1965 (1) LLJ 668] it was commanded by the Apex Court that a dispute raised by a single workman cannot become an industrial dispute unless it is supported either by his union or in the absence of a union by substantial number of

workmen. Same law was laid in the case of Indian Express Newspaper (Pvt.) Limited [1970 (1) LLJ 132]. However in Western India Match Company [1970 (II) LLJ 256], the Apex Court referred the precedent in Drona Kuchi Tea Estate's case [1958 (1) LLJ 500] and ruled that a dispute relating to "any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of labour, the parties, dispute for a direct or substantial interest".

14. What a substantial or considerable number of workmen would be in a given case, depend on particular facts of the case. The fact that an "industrial dispute", is supported by other workmen will have to be established either in the form of a resolution of the union of which workman may be member or of the workmen themselves who support the dispute or in any other manner. From the mere fact that a general union, at whose instance an "industrial dispute" concerning an individual workman is referred for adjudication, has on its roll a few of the workmen of the establishment as its members, it cannot be inferred that the individual dispute has been converted into an "industrial dispute". The Tribunal has therefore, to consider the question as to how many of the fellow workman actually espoused the cause of the concerned workman by participating in the particular resolution of the Union. In the absence of a such a determination by the Tribunal, it cannot be said that the individual dispute acquired the character of an industrial dispute and the Tribunal will not acquire jurisdiction to adjudicate upon the dispute. Nevertheless, in order to make a dispute an industrial dispute, it is not necessary that there should always be a resolution of substantial or appreciable number of workmen. What is necessary is that there should be some express or collective will of a substantial or an appreciable member of the workmen treating the cause of the individual workman as their own cause. Law to this effect was laid in P.Somasundrameran [1970 (1) LLJ 558].

15. It is not necessary that the sponsoring union is a registered trade union or a recognized trade union. Once it is shown that a body of substantial number of workmen either acting through a union or otherwise had sponsored the workman's cause, it is sufficient to convert it into an industrial dispute. In Pardeep Lamp Works [1970 (1) LLJ 507] complaints relating to dispute of ten workmen were filed before the Conciliation Officer by the individual workmen themselves. But their case was subsequently taken up by a new union formed by a large number of co-workmen, if not a majority of them. Since this union was not registered or recognized, the workmen elected five representatives to prosecute the cases of ten dismissed workmen. Thus cases of the dismissed workmen were espoused by the new union, yet unregistered and unrecognized. The Apex Court held that the fact that these disputes were not taken up by a registered or recognized union does not mean that they were not "industrial dispute".

16. It is not expedient that same union should remain incharge of that dispute till its adjudication. The dispute may be espoused by the workmen of an establishment, through a particular union for making such a dispute an "industrial dispute", while the workman may be represented before the Tribunal for the purpose of section 36 of the Act by a member of executive or office bearer of altogether another union. The crux of the matter is that the dispute should be a dispute between the employer and his workmen. It is not necessary that the dispute must be espoused or conducted only by a registered trade union. Even if a trade union ceases to be registered trade union during the continuance of the adjudication proceedings that would not affect the maintainability of the order of reference. Law to this effect was laid by the High Court of Orissa in Gammon India Limited [1974 (II) LLJ 34]. For ascertaining as to whether an individual dispute has acquired character of an individual dispute, the test is whether on the date of the reference the dispute was taken up as supported by the union of the workmen of the employer against whom the dispute is raised by the individual workman or by an appreciable number of the workman. In other words, the validity of the reference of an industrial dispute must be judged on the facts as they stood on the date of the reference and not necessarily on the date when the cause occurs. Reference can be made to a precedent in Western India Match Co.Ltd. [1970 (II) LLJ 256].

17. Here in the case, not even an iota of facts are brought over the record to the effect that the union took up the cause of the claimant as their own. It is also not shown that the members of the union had shown their collective will in favour of the cause of the claimant. Thus it is evident that there is a complete vacuum of facts to the effect that the union espoused the cause of the claimant. Resultantly there is no material to conclude to the effect that the dispute acquired status of an industrial dispute. The reference is liable to be answered against the claimant on that score.

18. Next count of attack made by the Corporation that the dispute was raised by the claimant after 13 years, which frustrates the relief in his favour. Section 10 (1) of the Act does not prescribe any period of limitation for making reference of the dispute for adjudication. The words 'at any time' used in sub-section (1) of section 10 of Act does not admit of any limitation in making an order of reference. Law of limitation, which might bar any Civil Court from giving remedy in respect of lawful rights, cannot be applied by Industrial Tribunals. However, policy of industrial adjudication is that stale claim should not be generally encouraged or allowed unless there is satisfactory explanation for delay. In Shalimar Works Ltd. [1959 (2) LLJ 26], the Apex Court pointed out that though

there is no limitation prescribed in making reference of the dispute to Industrial Tribunal, even so, it is only reasonable that disputes should be referred as soon as possible after having arisen and on failure of conciliation proceedings. In Western India Match Company (1970 (2) LLJ 256) the Apex Court observed that in exercising its discretion, Government will take into account time which has lapsed between its earlier decision and the date when it decides to consider it in the interest of justice and industrial peace to make the reference for adjudication. Same view was taken in Mahabir Jute Mills Ltd. (1975 (2) LLJ 326). In Gurmail Singh (2000 (1) LLJ 1080) Industrial Adjudicator dismissed the reference on the ground that there was delay of 8 years in raising the dispute, which delay was condoned by the Apex Court and it was ordered that the workman would not be entitled to any back wages for the period of 8 years but would be entitled to 50% of wages from the date it raised the dispute till the date of his reinstatement. In Prahalad Singh (2000 (2) LLJ 1653), the Apex Court approved the award of the Tribunal in not granting any relief to the workman who preferred the claim after a period of 13 years without any reasonable or justifiable grounds. In Nedungadi Bank Ltd. (2002 (2) SCC 4) a lapse of seven years in raising the dispute was held to be a factor to refuse the relief. The Apex Court ruled that the appropriate Government has to exercise its powers of referring the dispute in a reasonable manner. Delay of seven years made the Court to conclude that there was no dispute existing or apprehended when decision was taken to refer it for adjudication. Same view was taken in Haryana State Co-operative Land Development Bank (2005 (5) S.C.C. 91). From above decisions, it can be said that the law relating to delay in raising or reference of dispute is bereft of any principles, which can be easily comprehended by the litigants.

19. Claimant raised the dispute in respect of overtime allowance paid to him with effect from 01.01.1997. Thus, it is emerging over the record that the claimant had raised the dispute after a long gap of 13 years. No explanation is offered for this inordinate delay. It appears that there was no industrial dispute in existence or could be even said to have been apprehended in the year 2012, when the appropriate Government applied its mind to the facts of the present controversy.

20. Corporation contests the dispute on the count that no notice of demand was served on it prior to raising a dispute before the Conciliation Officer. These facts also remained uncontroverted. The object of the Act is to protect workman against victimization by the employer and ensure termination of industrial dispute in a peaceful manner. The Act, however, does not provide for any set of social and economic principles for adjustment of conflicting interests. Such norms have been evolved and devised by industrial adjudication, keeping in view the social and economic conditions, the needs of the workmen, the requirement of the industry, social justice, relative interests of the parties and common good. These norms have given rights to the industrial employees what may be called industrial rights, as such rights may not be available at common law. Disputes as to the conditions of employment can be resolved by resorting to a technique known as collective bargaining. This tool is resorted to between an employer or group of employers and a bonafide labour union. Policy behind this is to protect workmen as a class against unfair labour practices. What imparts to the dispute of a workman the character of an "industrial dispute" is that it affects the right of the workmen as a class.

21. An industrial dispute comes into existence when the employer and the workman are at variance and the dispute/difference is connected with the employment or non-employment, terms of employment or with conditions of labour. In other words, dispute or difference arises when a demand is made by the workman on the employer and it is rejected by him and vice versa. In Sindhu Resettlement Corporation Ltd.(1968(1) LLJ 834), the Apex Court has held that mere demand, asking the appropriate Government to refer a dispute for adjudication, without being raised by the workmen with their employer, regarding such demand, cannot become an industrial dispute. Hence, an industrial dispute cannot be said to exist until and unless a demand is made by the workman or workmen on the employer and it has been rejected by him. In Fedders Lloyd Corporation Pvt. Ltd.(1970 Lab.I.C.421), High Court of Delhi went a step ahead and held that "... demand by the workman must be raised first on the management and rejected by it, before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who rejected the demand, is not sufficient to constitute an industrial dispute."

22. The above decision was followed by Orissa High Court in Orissa Industries Pvt. Ltd. (1976 Lab.I.C. 285) and Himachal Pradesh High Court in Village Paper Pvt. Ltd.(1993 Lab.I.C. 99). However, the Apex Court in Bombay Union of Journalists (1961 (2) LLJ 436) had ruled that an industrial dispute must be in existence or apprehended on the date of reference. If, therefore, a demand has been made by the workman and it has been rejected by the employer before the date of reference, whether direct or through the Conciliation Officer, it would constitute an industrial dispute. In Shambhunath Goyal (1978(1) LLJ 484), the Apex Court appreciated facts that the workman had not made a formal demand for his reinstatement in service. However, he had contested his dismissal before the Enquiry Officer and claimed reinstatement. Against the findings of the Enquiry Officer, he preferred an appeal to the Appellate Authority, claiming reinstatement on the ground that his dismissal was bad in law. Then again, he claimed reinstatement before the Conciliation Officer in the course of conciliation proceedings, which was

contested by the employer. Appreciating all these facts, the Apex court inferred that there was impeccable evidence that the workman had persistently demanded reinstatement, rejection of which brought an industrial dispute into existence.

23. In New Delhi Tailor Mazdoor Union (1979(39) FLT 195), High Court of Delhi noted that Shambunath Goyal had not overruled Sindhu Resettlement Pvt. Ltd. But it had distinguished it on facts. It was also pointed out that decision of three Judges bench in Sindhu Resettlement Pvt. Ltd. could not have been overruled by two Judge bench in Shambunath Goyal. The High Court concluded that decision in Sindhu Resettlement Pvt. Ltd., in case of any conflict between the two decisions, must prevail. The High Court held that making of the demand by the workman on the management was sine qua non for giving rise to an industrial dispute.

24. The High Court of Madras in Management of Needle Industries (1986(1) LLJ 405) has held that dispute or difference between management and the workman, automatically arises when the workman is dismissed from service. His dismissal per se creates a dispute or difference between the management and the workman. The Court further observed that "it is nowhere stipulated in the Act, particular in section 2(k), that existence of the dispute as such is not enough but then there should be a demand by the workman on the management to give rise to an industrial dispute". However, this decision appears to be inconsistent with the ratio of decision in Bombay Union of Journalists(supra) and Sindhu Resettlement (supra). No doubt, for existence of an industrial dispute, there should be a demand by the workman and refusal to grant it by the management. However, a demand should be raised, cannot be a legal notion of fixity and rigidity. Grievances of the workman and demand for its redressal must be communicated to the management. Means and mechanism of the communication adopted are not matters of much significance, so long as demand is that of the workman and it reaches the management. Reference can be made to the precedent in Ram Krishna Mills Coimbatore Ltd. (1984 (2) LLJ 259).

25. The Act nowhere contemplates that the industrial dispute can come into existence in any particular, specific or prescribed manner nor there is any particular or prescribed manner in which refusal should be communicated. For an industrial dispute to come into existence, written claim is not sine qua non. To read into the definition, requirement of written demand for bringing an industrial dispute into existence would tantamount to rewriting the section, announced the Apex Court in Shambunath Goyal(supra). In other words, oral demand and its rejection will as much bring into existence an industrial dispute, as written one. If facts and circumstances of the case show that the workman had been making a demand, which the management had been refusing to grant, it can be said that there was an industrial dispute between the parties.

26. Since the claimant had not come forward to project that demand notice was served on the corporation, under these circumstances, stand taken by the Corporation is to be believed. Corporation projects that no notice of demand was served on it, before industrial dispute was raised before the Conciliation Officer. Thus, it is emerging over the record that it has not been established that demand was raised on the corporation, which was rejected by it and as such, dispute has not acquired status of an industrial dispute.

27. Turning to facts presented by the Corporation, it emerges that the Corporation takes 10 hours duty from Chowkidars. Keeping in view the nature of duties performed, the Corporation was paying intermittent allowance to Chowkidars for performing more than 10 hours duty. Allowance was paid @ Rs.130.00 per month for performance of duty upto 12 hours, Rs.180.00 per month for duties performed for more than 12 hours but upto 16 hours and Rs.190.00 per month for performing duties more than 16 hours a day. Workers union agitated the issue and demanded overtime allowance in lieu of intermittent allowance. On the basis of the resolution, the Corporation, vide its decision dated 15.03.1997 decided to pay overtime allowance to the maximum limit of 50 hours. The said allowance was paid @Rs.625.00 per month. Workers union further demanded enhancement of maxima limit of overtime allowance and in consideration of the said demand, the Corporation started paying overtime allowance with a cap of 100 hours a month. Now, the Corporation is paying overtime allowance to Chowkidars at Rs.1250.00, in pursuance of Office Order dated 09.05.2011.

28. Annexure C, when scanned, highlights that from January 98 till March 2011, overtime allowance was paid to the claimant @ Rs.625.00 per month. From April 2011 till March 2013, overtime allowance has been paid to the claimant @ 1250.00 per month. Therefore, it is emerging over the record that overtime allowance is being paid to the claimant in accordance with the circulars, issued by the Corporation from time to time.

29. In view of the above reasons, it is evident that the action of the Corporation in paying overtime allowance to the claimant @ Rs.625.00 per month till March 2011 and thereafter Rs.1250.00 till date is in accordance with the circulars issued from time to time. Claimant is not entitled to overtime allowance more than the amount referred above. Resultantly, action of the Corporation is found to be justified. No relief is available to the claimant. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 20.12.2013

DR. R.K.YADAV, Presiding Officer

नई दिल्ली, 3 जुलाई, 2014

का.आ. 2001.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डायरेक्टर, डायरेक्टरेट ऑफ राइस रिसर्च, हैदराबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 25/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 26/06/2014 को प्राप्त हुआ था।

[सं. एल–42011/203/2011–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 3rd July, 2014

S.O. 2001.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 25/2012) of the Central Government Industrial Tribunal/Labour Court Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Director, Directorate of Rice Research, Hyderabad and their workman, which was received by the Central Government on 26/06/2014.

[No. L-42011/203/2011-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 18th day of March, 2014

INDUSTRIAL DISPUTE No. 25/2012

Between:

Sri R. Yellaiah & 6 others,
H.No.1-9-87/1,
Rajendra Nagar,
Hyderabad ... Petitioner

AND

The Director,
Directorate of Rice Research,
Post: Rajendranagar,
Hyderabad – 500 030 ... Respondent

APPEARANCES:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Smt. C. Vani Reddy, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-42011/203/2011-IR(DU) dated 27.2.2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Directorate of Rice Research and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Director, Directorate of Rice Research, Hyderabad in not giving the permanent status of employees with all consequential benefits to Shri R. Yellaiah & 6 others(list enclosed), Temporary Status casual labours, is legal and justified? What relief the workmen are entitled to?"

The reference is numbered in this Tribunal as I. D. No.25/2012 and notices were issued to the parties concerned.

2. Case stands posted for filing of Claim Statement and documents by Petitioner.

3. At this stage, Petitioner called absent. No representation. Though notice has been issued and served on the Petitioner time and again, Petitioner is not taking interest in the proceedings and making no claim before the court. In the circumstances, taking that there is no claim to be made by the Petitioner, 'Nil' Award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 18th day of March, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2002.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मिनिस्ट्री ऑफ ह्यूमन रिसोर्सेज डेवलपमेंट एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 84/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/07/2014 को प्राप्त हुआ था।

[सं. एल–42025/03/2014–आईआर(डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 7th July, 2014

S.O. 2002.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 84/2011) of the Central Government Industrial Tribunal/Labour Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Ministry of Human Resources Development & Others and their workman, which was received by the Central Government on 01/07/2014.

[No. L-42025/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 23rd June, 2014

PRESENT : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 84/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of National Institute of Technical Teachers Training and Research Centre (NITTT&RC) and their workman).

BETWEEN :

Sri D. Shankarlal : 1st Party/Petitioner

AND

1. Union of India
   Ministry of Human Resources Development New Delhi : 2nd Party/1st Respondent
2. The Chairman, Board of Directors, NITTT&RE, Taramani, Chennai : 2nd Party/2nd Respondent
3. The Director NITTT&RC, Taramani, Chennai : 2nd Party/3rd Respondent
4. The Administrative Officer NITTT&RC, Taramani, Chennai : 2nd Party/4th Respondent

AWARD

APPEARANCE :

For the 1st Party/Petitioner : M/s P. Muthukumarasamy, Advocates

For the 2nd Party/1st Respondent : Set Ex-parte

For the 2nd Party/2nd Respondent : M/s Sai Raaj Associates, Advocates

For the 2nd Party/3rd Respondent : M/s Sai Raaj Associates, Advocates

For the 2nd Party/4th Respondent : M/s Sai Raaj Associates, Advocates

This is an Industrial Dispute taken for adjudication on the file under Sub-Section 2A of Section-10 of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15.09.2010).

2. The averments filed by the petitioner in the Claim Statement in brief are these:

The petitioner is a B.Com Degree Holder and has completed his Diploma in Refrigeration and Air-Conditioning Course. The National Institute of Technical Teachers Training and Research Centre, Chennai represented by Respondents 2 to 4 trains Technical Teachers all over India. The Institute had 85 Air-Conditioners in the year 2003 in which year the petitioner was appointed as NMR Worker. The petitioner was maintaining the Air-Conditioners of the Institute after his appointment. Earlier the work was done on contract basis. The petitioner who had joined the Institute on 10.07.2003 had continued his work in the Institute till date. Now there are around 200 Air-Conditioners in the Institute. After appointment of the Third Respondent, he was not renewing the work of the petitioner in spite of the proposal of the Junior Engineer. It is learnt by the petitioner that the Third Respondent is trying to engage private agency on contract basis to maintain the Air-Conditioners. The petitioner, after his appointment in the year 2003 was working even on Saturdays and Sundays and was called for different programs and events. His engagement was continuously renewed for every 90 days. He had been working for around 250 days annually. The petitioner was not allowed to continue in his job after 13.08.2010. The petitioner was under the legitimate expectation that he would be permanently appointed in the Institute since he has been continuously working for more than 7 years. The petitioner had sent a representation requesting to appoint him permanently and to renew his appointment. He had also filed a petition before the Central Administrative Tribunal, Chennai. Since it was suggested that this Tribunal is the proper forum the petitioner has withdrawn the petition before the Central Administrative Tribunal. Several other workers including Nagappan who were appointed as NMRs in the Institute were given permanent appointment subsequently. The petitioner was discriminated by refusing to give permanent appointment to him. An order may be passed directing the Third Respondent to reinstate the petitioner in service and regularize his appointment.

3. The Respondents have filed Counter Statement contending as follows:

The averments and allegations made by the petitioner in his Claim Statement are denied and he is put to strict proof of the contents of the same. The dispute is not maintainable before this Tribunal since the appropriate Government for the Institute would be only the State Government and not the Central Government. The National Institute of Technical Teachers and Research Centre is a Society registered under the Societies Registration Act. It has been imparting technical education and training to Engineering and Polytechnic Teachers and undertaking research in relation to engineering education. It is an Autonomous Body and employs persons on the basis of recruitment and service rules framed by the Institute. Any vacancies are filled in by calling for suitable candidates by placing advertisements and after interview. When there is temporary need for engagement of a person he is engaged on ad-hoc basis for certain fixed period as NMR worker. He would be told that the service would come to an end after completion of the period. The allegation that the Third and Fourth Respondents have refused to extend the service of the petitioner is not correct. The petitioner used to be engaged only for a specified period. When there was a review in respect of the petitioner's request for extension of his engagement on NMR basis it was decided to entrust the civil and electrical works of the Institute on contractual basis to empanelled Contractors so as to improve the efficiency. Since there was no sanctioned post it was decided not to extend the services of the petitioner. It is incorrect to state that the petitioner was engaged continuously for 250 days in a year. He used to be appointed for a period of 90 days and completion of the period the service of the petitioner will become automatically terminated. Each engagement was a fresh engagement and the petitioner cannot claim to have worked continuously in the Institute. As the service of the petitioner stood terminated automatically on completion of the period of engagement there was no question of conducting any domestic enquiry. The case of the petitioner that he had worked in the Institute continuously from 2003 including on Saturdays and Sundays and he was maintaining the Air-Conditioners economically and efficiently is not correct. Being an autonomous institute funded by the Ministry of Human Resources, the Institute is bound by the rules and regulations of recruitment. Nagappan referred to in the Claim Statement of the petitioner was appointed as Technician Grade-III by following due process of recruitment procedure. The petitioner is not entitled to any relief.

4. The evidence in the case consists of the oral evidence of WWs 1 to 3 and MW1 and also documents marked as Exts.W1 to Ext.W47 and Ext.M1 and Ext.M2.

5. The points for consideration are:

(i) Whether the petitioner is entitled to the relief of reinstatement in the service of the National Institute of Technical Teachers Training and Research Centre?

(ii) Whether the petitioner is entitled to regularization in service?

(iii) If not what if any is the relief to which the petitioner is entitled?

The Points

6. The petitioner who is a B.Com. Degree Holder and is a Diploma Holder in Refrigeration and Air-Conditioning Course has claimed that he was appointed in the NITTE & RC in the year 2003 on Non-Muster Roll basis, that his engagement was renewed every 90 days, that he had worked around 250 days every year and has continued to work so until 13.08.2010 from which date he was denied work without any Show Cause Notice without assigning any reason and without any enquiry. He has claimed that denial of work to him is illegal and that he is entitled to reinstatement and also for regularization in the permanent post. According to him he was working as AC Mechanic and was maintaining all the Air-Conditioning machines of the Institution during the period. According to Respondents 2 to 4 having been engaged on Non-Muster Roll basis the petitioner is not entitled to reinstatement or any other benefits not to state anything about regularization. According to the Respondents 2 to 4, for effective management of Air-Conditioners they have given the work to empanelled Contractors.

7. Though a preliminary objection is seen raised by Respondents 2 to 4 in their Counter Statement that the appropriate Government in respect of the institute in question is the State Government and not the Central Government and therefore the dispute is not maintainable before this forum, this plea has been subsequently given up by them.

8. In the Counter Statement, there is no specific denial of the case that the petitioner had worked in the Institute in question for some time. However, it is not specifically admitted for which period the petitioner had been working. The claim of the petitioner that he had been working for more than 240 days is denied in the Counter Statement. What is stated is that even according to the petitioner his engagement was for a specified period consequent to which the engagement would become automatically terminated on the expiry of the period. As seen from the Counter Statement during July 2010 the Respondents had decided to entrust various works through empanelled Contractors and the petitioner was also given an opportunity to empanel as a Contractor in the institute but he had not used the opportunity.

9. The evidence and documents available would clearly show that the petitioner had been working in the Institute and doing the work of maintaining the Air-Conditioners of the Institute for quite a long time. It is also clear from the documents produced that he is a B.Com. Degree Holder and is having Diploma in Refrigeration and Air-Conditioning Course. Ext.W1 is the certificate of Diploma and Ext.W2 is his Degree Certificate. That the petitioner is having this qualification is not challenged by the Respondents also.

10. The petitioner has stated in his affidavit of examination that he has worked continuously for more than 240 days since the year 2003 for 7 years. He has produced copy of the proceedings of several engagements as NMR in the Institute starting from 10.07.2003. He has stated that because of his long engagement he could not have been thrown out from the Institute without any Show Cause Notice and without any enquiry.

11. Apart from Ext.W3 showing engagement from 10.07.2003, Ext.W6 to Ext.W9, Ext.W10 to Ext.W20, Ext.W24, Ext.W26 to Ext.W35, Ext.W37 and Ext.W38 are all proceedings of engagement as NMR. However, in none of these documents the name of the petitioner is referred to as a person to be appointed. All these proceedings are issued by the Principal stating that sanction is accorded for engagement of one person on NMR basis as AC Technician. Even though the petitioner is not named as the person appointed on the basis of these proceedings and he had not produced any order engaging him as AC technician based on the proceedings, it is very much clear that he himself was the person continuing as AC Technician on the basis of the different proceedings of the Principal. Ext.W9 is the copy of the submission given to the by the petitioner to the Director of the Institute claiming Rs. 1,050 towards arrears of wages for 150 days starting from 01.04.2004 to 31.10.2004. There is another such claim marked as Ext.W21 for Rs. 2,280 for 228 days starting from 01.04.2007 to 31.12.2007. Ext.W44 is the calculation sheet for the claim of arrears for different periods starting from July 2003 and ending in September 2005. The authenticity of these claims are not disputed by the Respondents.

12. Apart from the above documents there is the evidence given by none other than two teachers of the Institute examined as WW2 and WW3 with supporting documents. WW2 is the Assistant Professor in the Electrical Engineering Department of the Institute. She has stated that during 2007-2009 she was in-charge of A/C maintenance of the Institute. She has further deposed that during this period the petitioner was working under her. A junior engineer who was under her control was the one who was maintaining the Attendance Register in respect of the petitioner. Ext.W46 is the copy of the Attendance Register produced on behalf of the petitioner. WW2 has stated that pages 86 to 126 in this contain her attestation. In certain sheets she has endorsed that the petitioner had been working on Saturdays and Sundays also. This evidence of WW2 is not challenged in Cross-Examination. WW3 is the Head of the Department of Electrical and Electronics in the department. This witness has stated that the petitioner was working in the Institute from 2003 till his termination. He has deposed that the petitioner was in charge of A/C maintenance and was regularly coming to the Institute and was working even on certain Saturdays and Sundays. In Ext.W46, pages 129 to 142 and 143 to 146 are attested by him. Ext.W23 is the Experience Certificate issued by WW2. Ext.W25 is the copy of the submission to the Director given by WW2 to extend the NMR engagement for maintenance of AC units. Though the name of the person then working as AC Mechanic is not given it is clear that the person referred is the petitioner himself since he was the one who was working in the capacity throughout.

13. Ext.W46 and the proceedings of the engagement would show that during the period from July 2003 to June 2010 the petitioner had worked more than 240 days in each year. It is true that the engagement was either for 90 days or for 60 days but it is very much clear that the engagement was extended again and again till June 2010. Thus, whatever is the nature of the engagement of the petitioner, whether as casual or temporary or on daily wage basis, he was working in the Institute throughout as AC Mechanic and he was being paid by the Institute during the period from July 2003 to June 2010. So definitely the petitioner is a workman as defined in Section-2(s) of the ID Act.

14. It is clear from the contentions raised by Respondents 2 to 4 that no notice of termination was given to the petitioner. He was not given any benefits under Section-25(f) of ID Act also. The claim of the petitioner is that he having been terminated without any Show Cause Notice, he is entitled to be reinstated in service. The case that is put forth by the Respondents is that the Institute has decided to give the work to empanelled Contractors and accordingly, the work has been given to them. It is apparent from this contentions of the Respondents itself that the Institute has not been thinking of permanently employing a person in the post in which the petitioner was working. It is clear from the evidence of WW2 and WW3 and also MW1 that the petitioner was working in a sanctioned post itself. WW2 has deposed that there is a permanent post of AC Mechanic in the Institute. She has stated that earlier one Rajkumar was working in the post. MW1 who is the Superintendent of the Institute has stated that this Rajkumar was maintaining Air-Condition machines prior to 2003 but he was dismissed from service. It is also clear from the evidence that in 2008 an attempt has been made to fill up the post by the recruitment procedure of the Institute. Ext.W45 is the advertisement calling for application to the post. It is admitted by MW1 also that application was called for. According to the petitioner he was the only applicant to

the post but yet he was not selected for the post. There is of course the evidence given by the petitioner only regarding this. It is not known under what circumstances his application was not considered or he was not selected for the post. In any case it is apparent that the Institute has invited applications for the post of AC Mechanic. Ext.W47 is the recruitment service rules of the Institute showing that Technician Grade-III also is one of the post. As seen from Ext.W45 the application called for was for the post of Tech Grade-III (AC Mechanic). All this make it clear that there is a sanctioned post of AC Mechanic under Technician Grade-III and someone had permanently worked in the post earlier. The practice of the Institute seemed to be to accommodate persons requiring technical knowledge under Technician Grade-II. It is in this manner the petitioner who is a Diploma Holder in Refrigeration and Air-Conditioning was engaged for the maintenance of Air-Conditioners in the Institute.

15. The Institute having so far not resorted to a normal recruitment procedure to fill up the post, the petitioner who is the workman who had worked in the Institute for more than 240 days each year during the period from July 2004 to July 2010 will be entitled to be reinstated in service. Of course there is the contention of the Respondents that an empanelled Contractor has been engaged for this purpose. This is not an engagement as per the procedure prescribed in Ext.W47. When the Institute has decided to engage somebody for AC maintenance again after termination of the petitioner, in the normal course he was entitled to be engaged under Section-25(H) of the Act. It is a baffling question why the Institute has decided to engage a contractual agency for the purpose. It is stated by WW2 in Ext.W25 is taken into account the Institute must now be paying exorbitant amount for the maintenance of the Air-Conditioners in the Institute. In Ext.W25, WW2 has stated that if the annual maintenance is given to external agencies, the approximate cost of this will work to Rs. 10,00,000 per year @ Rs. 5,000 per Air-Conditioning Unit. She has pointed out that if an Electrical Assistant is hired he need be paid @ Rs. 224 per day and his annual wage would work out to Rs. 72,000 only. This was in the year 2008. The amount payable to external agency in 2010 must have been far higher than this. Yet the Respondents has resorted to outsourcing of the work rather than filling the post by normal recruitment procedure or allowing the petitioner to continue the work until the post is filled up as per the Recruitment Rules. The Institute and thereby the common people must be losing lakhs of rupees on this account alone. It would be far better if the post if filled up permanently for the purpose of maintenance of the Air-Conditioners in the Institute. Until then it is only proper that the petitioner is allowed to continue the work.

16. The petitioner has been claiming the relief of not only reinstatement but also regularization in the post. This is not a relief that could be granted to the petitioner. The counsel for the Respondents has referred to the decision of the Apex Court in SECRETARY, STAT OF KARNATAKA AND OTHERS VS. UMA DEVI AND OTHERS reported in AIR 2006 SCC 1806 in this respect. The Apex Court has observed while considering the claim of regularization by a group of persons who were appointed on ad-hoc basis that it is not as if the person who accepts an engagement either temporary or casual in nature is not aware of the nature of his employment, that he accepts the employment with eyes open and it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible, it was stated. The Apex Court has further held that when a person enters a temporary employment or gets engagement as a Contractual or casual worker and the engagement is not based on proper selection as recognized by the relevant rules or procedure he is aware of the consequences of the appointment being temporary, casual or contractual in nature and such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following proper procedure for selection.

17. There is no case for the petitioner that he was selected by proper procedure. It is admitted by him itself that the Respondents have made an endeavour to fill up the post in the normal procedure in 2008 by calling applications for the post. The appointment of the petitioner was always for a limited period though his term was extended again and again. Only because of such extension he could not have expected that he will be made permanent in the post. The Respondents do not seem to have given room for any such expectation to him. So the claim of the petitioner for regularization in the post is only to be rejected. If reinstated the petitioner will work in the Institute in the same manner as he worked earlier. He will not be entitled to any benefits due to a permanent employee. If the Respondents are not inclined to reinstate the petitioner in service they are at liberty to pay him compensation which is fixed as Rs. 2,00,000.

18. In view of my discussion above, Respondents 2 to 4 are directed to reinstate the petitioner in service within a month. In the alternative they are at liberty to pay him compensation of Rs. 2,00,000 within a month. In default of the payment of amount, it will carry interest @ 9% per annum from the date of the award.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 23rd June, 2014).

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner : WW1, Sri D. Shankarlal
WW2, Ms. G.A. Rathy
WW3, Sri S. Dhanasekaran

For the 2nd Party/ Management : MW1, Sri K. Sekar

Documents Marked :

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	26.09.2008	Copy of the Diploma Certificate
Ex.W2	18.02.2000	Copy of the Degree Certificate
Ex.W3	10.07.2003	Copy of the proceedings of engagement as NMR
Ex.W4	16.07.2003	Experience Certificate issued by Cold Spot
Ex.W5	11.10.2003	Letter to prove for work in Saturday and Sundays
Ex.W6	01.12.2003	Copy of the proceedings of engagement as NMR
Ex.W7	15.03.2004	Copy of the proceedings of engagement as NMR
Ex.W8	30.06.2004	Copy of the proceedings of engagement as NMR
Ex.W9	08.11.2004	Arrears claimed from 1/4 to 31.10.2004 by the petitioner
Ex.W10	09.11.2004	Copy of the proceedings of engagement as NMR
Ex.W11	10.03.2005	Copy of the proceedings of engagement as NMR
Ex.W12	04.07.2005	Copy of the proceedings of engagement as NMR
Ex.W13	07.11.2005	Copy of the proceedings of engagement as NMR
Ex.W14	13.02.2006	Copy of the proceedings of engagement as NMR
Ex.W15	26.05.2006	Copy of the proceedings of engagement as NMR
Ex.W16	12.10.2006	Copy of the proceedings of engagement as NMR
Ex.W17	08.02.2007	Copy of the proceedings of engagement as NMR
Ex.W18	05.05.2007	Copy of the proceedings of engagement as NMR
Ex.W19	20.08.2007	Copy of the proceedings of engagement as NMR
Ex.W20	17.12.2007	Copy of the proceedings of engagement as NMR
Ex.W21	10.01.2008	Arrears claimed from 1/4/2007 to 12/2000 by the petitioner
Ex.W22	10.03.2008	Experience certificate issued by the Respondent
Ex.W23	19.03.2008	Experience certificate issued by the Respondent
Ex.W24	03.04.2008	Experience certificate issued by the Respondent
Ex.W25	27.06.2008	Recommendation to extend the contract by the department head
Ex.W26	17.07.2008	Copy of the proceedings of engagement as NMR
Ex.W27	10.10.2008	Copy of the proceedings of engagement as NMR
Ex.W28	05.11.2008	Copy of the proceedings of engagement as NMR
Ex.W29	19.01.2009	Copy of the proceedings of engagement as NMR
Ex.W30	23.03.2009	Copy of the proceedings of engagement as NMR
Ex.W31	11.05.2009	Copy of the proceedings of engagement as NMR
Ex.W32	16.06.2009	Copy of the proceedings of engagement as NMR
Ex.W33	03.07.2009	Copy of the proceedings of engagement as NMR
Ex.W34	02.09.2009	Copy of the proceedings of engagement as NMR
Ex.W35	09.11.2009	Copy of the proceedings of engagement as NMR
Ex.W36	03.12.2009	Recommendation of the HOD for extending contract
Ex.W37	17.12.2009	Copy of the proceedings of engagement as NMR
Ex.W38	24.03.2009	Copy of the proceedings of engagement as NMR
Ex.W39	19.08.2010	Copy of the representation by the petitioner with proof of service
Ex.W40	08.10.2011	Copy of the petition before the Assistant Labour Commissioner
Ex.W41	11.03.2011	Copy of the counter filed by the Respondent
Ex.W42	28.03.2011	Copy of the reply filed by the petitioner

Ex.W43	23.08.2011	Copy of the failure report
Ex.W44	-	Calculation sheet for the claim of arrears demand by the petitioner from the Respondent
Ex.W45	-	Advertisement 1/2008 call for application to the post of AC Mechanic issued by the Respondent's institution
Ex.W46 (Series)	01.08.2009 to 30.07.2010	Copy Attendance Register
Ex.W47	-	Technical Teachers Training Institute (Southern Region) Recruitment and Service Rules

On the Management's side

Ex. No.	Date	Description
Ex.M1	-	Sanctioned strength and number of vacant posts as on 31.03.2013 – Teaching and Non-Teaching Posts (Group A, B, C & D) as on 30.06.2013
Ex.M2	-	Technical Teachers Training Institute Recruitment and Service Rules.

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2003.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 148/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22013/1/2014–आईआर (सी–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2003.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 148/2006) of the Central Government Industrial Tribunal/Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 07/07/2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 28th day of May, 2014

INDUSTRIAL DISPUTE L.C. No. 148/2006

Between:

Sri Mittapalli Kumara Swamy,
S/o Raya Bose,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad ... Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Limited,
Mandamarri Area,
Mandamarri, Adilabad District.

2. The Superintendent of Mines,
M/s. Singareni Collieries Company Limited,
SMG-3 Incline, Mandamarri Area,
Mandamarri, Adilabad District ... Respondents

APPEARANCES:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

This is a petition filed by Sri Mittapalli Kumara Swamy the workman invoking Sec.2A(2) of the Industrial Disputes Act, 1947 seeking for declaring the impugned office proceeding No.P/MM/7/2/98/697 dated 4.3.1998 issued by the 1st Respondent as illegal and arbitrary, and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all attendant benefits such as continuity of service back wages, etc.

2. **The averments made in the petition in brief are as follows :**

Petitioner was appointed as badli filler on 22.6.1990 and further he was promoted as coal filler on 21.12.1995. From the date of appointment Petitioner was regular to his duties till the year 1996. During which time Petitioner suffered with illness and other family problems. While so,

chargesheet dated 24.5.1997 was issued alleging that Petitioner could work only for 35 days during the year 1996 and that it amounts to misconduct under company's Standing Orders No. 25.25. Thereafter a formal enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer submitted his report, basing on which the impugned proceeding was issued dismissing the Petitioner from service with effect from 6.3.1998 vide office order dated 4.3.1998. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner categorically pleaded that his inability to perform the duties for not more than 35 musters during 1996, was only on account of his illhealth and other family problems. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner. Exclusively relied upon the findings of the Enquiry Officer the impugned order was passed in a cryptic manner. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. **Respondent filed his counter with the averments in brief as follows :**

Sec. 2A(2) of the Industrial Disputes Act, 1947 is not applicable to the Petitioner since appropriate government is central government but not state government. The habitual unauthorised absenteeism need not be condoned as per the mandate of the Hon'ble the Apex Court. During the calendar year 2004 Petitioner put only 81 musters as such the chargesheet was issued under Standing No. 25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". Petitioner acknowledged the receipt of the chargesheet but did not submit written explanation to the chargesheet. Since the Petitioner was not attending to duties the chargesheet cum enquiry notice was published in Telugu daily Andhra Jyothi dated 20.11.1997 advising the Petitioner to attend for an enquiry on 28.11.1997. There after the enquiry was conducted. Petitioner fully participated in the enquiry. He was given fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Petitioner. Petitioner did not opt to have defence assistant. The said proceedings were conducted in Telugu and were explained to the Petitioner in Telugu, the language to which Petitioner is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Petitioner did not preferred to cross examine the Management witnesses. He did not submit any documents in support of his statement, except one unfit certificate and one fit certificate. Basing on the evidence made available the Enquiry Officer found the Petitioner guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Petitioner is fully aware of the same but he has not availed the facilities. His attendance particulars from 1995 to 1997 are as under:

Year	Musters
1995	112
1996	035
1997	016

The explanation given by the Petitioner for the show cause notice against the enquiry proceedings and enquiry report also was found not satisfactory. The contention of the Petitioner that the enquiry was conducted as a formality and with predetermined notion and that the contentions of the Petitioner were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Petitioner did not produce any documents to substantiate the alleged illness of his sister. The punishment imposed is not disproportionate to the charges levelled. Due to the absenteeism the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Petitioner. Petition is liable to be dismissed.

5. **Petitioner further filed rejoinder with the averments as under :**

During the year 1996, Petitioner's uncle was murdered in Beemaram Village of Jaipur Mandal, Adilabad District by the Naxalites. Due this incident, his wife has fallen sick and on account of her ill-health, Petitioner faced several health and family problems. He became a patient of Blood Pressure. He has taken treatment some time in the company's hospital and also outside hospitals. He has submitted medical certificates during enquiry proceedings, but those have been ignored by the Enquiry Officer on the ground that, those were not handed over to the Pay Sheet Clerk. Hence, Petitioner prays for setting aside the impugned order of dismissal.

6. Learned counsel for the Petitioner filed a memo stating that Petitioner is not disputing with the validity of

the domestic enquiry conducted in this case. There on by virtue of order dated 13.04.2009 this court held that the domestic enquiry conducted in this case is valid.

7. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

8. **The points arise for determination are :**

I. Whether the impugned order No. P/MM/7/2/98/697 dated 4.3.1998 is liable to be set aside? If so, on what grounds?

II. To what relief the Petitioner is entitled for?

9. **Point No. I :**

It is an admitted fact that the Petitioner has been absent from duty unauthorisedly during the chargesheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absenting from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absence from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Petitioner from duty. It is his consistent plea that due to his sickness he could not attend to the duties.

10. As can be gathered from the material on record, during the course of enquiry and to substantiate his contentions regarding his sickness, the Petitioner has produced fit and unfit certificates issued by the Respondent company's hospital. With this regard the only question put to him during his cross examination on behalf of the Management is that he did not hand over the said certificates to his pay sheet clerk. That means, Management is not disputing with the correctness of these certificates and the sickness pleaded by the Petitioner. Thus, it can clearly be seen that there is sufficient cause for the Petitioner to remain absent from duty i.e., his sickness.

11. Apart from his sickness Petitioner is pleading that there were other sufficient causes for his remaining absent from duty like, his wife falling sick owing to the murder of his uncle by the Naxalites. This is the plea taken up by the Petitioner in his rejoinder. Though, such a new plea has been taken up in the rejoinder filed by the Petitioner in the year 2011, Respondent has not chosen to file any additional counter disputing with the averments therein. That means, they are not actually disputing with the said averments. This is also one circumstance to be take a note of.

12. It is not the contention of the Respondent that Petitioner has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to award punishment to the Petitioner. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Petitioner by the Disciplinary Authority. In the impugned order it is stated that the past record of the Petitioner was gone through by the Disciplinary Authority and that there are no extenuating circumstances to take a lenient view in the matter. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no previous proven misconduct. In the given circumstances the Disciplinary Authority taking such alleged past record into consideration while awarding punishment is not at all reasonable.

13. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Petitioner is guilty of misconduct under Standing Orders 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the impugned order No.P/MM/7/2/98/697 dated 4.3.1998 is liable to be set aside.

This point is answered accordingly.

14. **Point No. II :**

No doubt, as per the finding given in Point No.I, the impugned order No. P/MM/7/2/98/697 dated 4.3.1998 whereunder Petitioner has been dismissed from service is liable to be set aside. But the fact remains that Petitioner remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors regarding his inability to attend to the duties at any point of time before or during the period of his absence from duty.

15. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Petitioner is to be awarded with appropriate punishment. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Petitioner.

16. In view of the fore gone discussion, Petitioner is to be reinstated into service consequent to the declaration that the impugned order No. P/MM/7/2/98/697 dated 4.3.1998 as illegal and arbitrary and setting aside the same.

Instead Petitioner shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, petition is allowed. The impugned order No. P/MM/7/2/98/697 dated 4.3.1998 is hereby declared as illegal and arbitrary and is hereby set aside. The Petitioner shall be reinstated into service as badli filler forthwith, with effect from 6.3.1998. He shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 28th day of May, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2004.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 131/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22013/1/2014–आईआर (सी–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2004.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 131/2005) of the Central Government Industrial Tribunal/Labour Court Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, which was received by the Central Government on 07/07/2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: - SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 1st day of May, 2014

INDUSTRIAL DISPUTE L.C.No. 131/2005

Between:

Smt. Peram Tirupathi,
S/o Yellaiah,
C/o Smt. A. Sarojana, Advocate,
Flat No. G7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp: Badruka Jr. College for Girls,
Kachiguda, Hyderabad ... Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Limited,
Srirampur Area,
Srirampur, Adilabad District.

2. The Superintendent of Mines,
M/s. Singareni Collieries Company Limited,
RK NT Incline,Srirampur Area,
Srirampur, Adilabad District ... Respondents

APPEARANCES:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

This is a petition filed by Sri Peram Tirupathi the workman invoking Sec. 2A(2) of the Industrial Disputes Act, 1947 seeking for declaring the impugned office proceeding No.SRP/PER/13.008/6164 dated 27.10.2005 issued by the 1st Respondent as illegal and arbitrary, and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all attendant benefits such as continuity of service back wages, etc.

2. **The averments made in the petition in brief are as follows :**

Petitioner was appointed as badli filler in the year 1988 and was confirmed as coal filler in 1990. He was converted as multi skilled group workman in the year 1996 and later on he was promoted as coal cutter in the year 2002. During the year 2003 it was found that Petitioner's sister was suffering with cancer. As there was no other family member to attend her Petitioner was constrained to accompany her wherever and whenever required for her treatment. Due to the same he could not be regular to his duties. The said fact was brought to the notice of the Respondent authorities by the Petitioner. Despite, chargesheet dated 24.2.2005 was issued alleging that Petitioner remained habitually absent from duty during the year 2004 and that it amounts to misconduct under company's Standing Orders No. 25.25. Thereafter a formal enquiry was conducted wherein Petitioner was not given any valid opportunity. The enquiry was a mere formality and the Enquiry Officer submitted his report, basing on which the impugned proceeding was issued dismissing the Petitioner from service with effect from 1.11.2005. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner explained the reason why he could not attend to his duties and also produced the medical prescriptions and other documents which clearly establish the factum of his sister under going treatment for cancer. But, the same were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner. Exclusively relied upon the findings of the Enquiry Officer the impugned order was passed in a cryptic manner. While so, the Disciplinary Authority relied upon the past conduct of the Petitioner, though the said past conduct is not part of chargesheet and he is estopped from considering the said past conduct while considering the report of the Enquiry Officer. Even otherwise, there were no adverse remarks against the Petitioner during his past service. Therefore, conclusion of the Disciplinary Authority that there were not extenuating circumstances to take a lenient view is wholly untenable. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. **Respondent filed his counter with the averments in brief as follows :**

Sec.2A(2) of the Industrial Disputes Act, 1947 is not applicable to the Petitioner since appropriate government is central government but not state government. The habitual unauthorised absenteeism need not be condoned as per the mandate of the Hon'ble the Apex Court. During the calendar year 2004 Petitioner put only 81 musters as such the chargesheet was issued under Standing No. 25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". "Petitioner gave his explanation dated 7.3.2005 which was found not satisfactory. There after the enquiry was ordered. Petitioner fully participated in the enquiry. He was given free fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Petitioner. Petitioner did not opt to have defence assistant. He expressed no objection for recording the proceedings of the enquiry in English. The said proceedings were conducted in Telugu and were explained to the Petitioner in Telugu, the language to which Petitioner is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Petitioner did not preferred to cross examine the Management witnesses. He did not submit any documents in support of his statement, that he was absent due to ill-health. Basing on the evidence made available the Enquiry Officer found the Petitioner guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Petitioner is fully aware of the same but he has not availed the facilities. Petitioner was also counselled in May, 2005 as there was no improvement in his performance Respondent was constrained to dismiss him from service.

His attendance particulars from the year 2000 are as under:

Year	Musters
2000	105
2001	206
2002	165
2003	198
2004(Chargesheeted year)	081

The explanation given by the Petitioner for the show cause notice against the enquiry proceedings and enquiry report also was found not satisfactory. The contention of the Petitioner that the enquiry was conducted as a formality and with predetermined nature and that the contentions of the Petitioner were not considered by the Enquiry Officer

and Disciplinary Authority are all incorrect. Petitioner did not produce any documents to substantiate the alleged illness of his sister. The punishment imposed is not disproportionate to the charges levelled. Due to the absenteeism the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Petitioner. Petition is liable to be dismissed.

4. Learned counsel for the Petitioner filed a memo stating that Petitioner is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 11.11.2008 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. **The points arise for determination are**:

I. Whether the impugned order No. SRP/PER/ 13.008/6164 dated 27.10.2005 is liable to be set aside? If so, on what grounds?

II. To what relief the Petitioner is entitled for?

7. Point No. I :

It is an admitted fact that Petitioner who has been working as coal cutter as on 24.2.2005 was issued with the chargesheet of the even date from the Respondent where under he has been charged with the misconduct owing to unauthorised absenteeism from duties during the year 2004. It is an undisputed fact that during the year 2004 Petitioner put in only 81 musters and he did not secure any permission /grant of leave from duty from concerned authorities while remaining absent from duty on the other days during this year.

8. But, it is his contention that there is sufficient cause for his absenteeism though, he unauthorizedly absented himself from duty. The said cause being given by him is that he was constrained to attend to his sister who was suffering from cancer.

9. No doubt, Standing Orders 25.25 of the Respondent company makes the, "habitual late attendance or habitual absence from duty without sufficient cause", as misconduct.

10. Now, it is to be verified whether the finding of the Enquiry Officer that the Petitioner was guilty of misconduct due to his unauthorised absence from duty is correct and whether the punishment awarded by the Disciplinary Authority for this alleged misconduct is proportionate and justified.

11. If Petitioner remained absent from duties owing to his sister's fatal illness, i.e., cancer, it can not be said that there is no reasonable cause for his absenteeism. But, as can be gathered from the enquiry proceedings, it is the explanation given by the Petitioner that due to his mother's sickness he could not attend to his duties. But, in the present petition, Petitioner claimed that owing to the fatal sickness of his sister i.e., cancer and as he was attending to her, he could not attend to his duties. Further, Petitioner claimed that during the course of enquiry he submitted the medical prescriptions pertaining to his sister before the Enquiry Officer but the same were not considered. This is not a correct statement. During the departmental enquiry he never pleaded that his sister suffered cancer and owing to the same he could attend to his duties.

12. In the given circumstances, the enquiry report can not be find fault with. The enquiry proceedings clearly reveal that due opportunity has been given to the Petitioner and the principles of natural justice were followed during the enquiry. Thus, the contentions put forth by the Petitioner regarding the enquiry and the findings of the Enquiry Officer can not be accepted.

13. As far as the punishment imposed by the Disciplinary Authority against the Petitioner is concerned, as rightly pointed out for the Petitioner, the past conduct of the Petitioner which is not mentioned anywhere in the chargesheet ought not to have been considered by the Disciplinary Authority while imposing punishment to the Petitioner. Further more, it is not the case of the Respondents that for any of the past conduct of the Petitioner there has been any adverse remark/punishment. Thus, it is to be held that considering such past conduct without giving any opportunity to the Petitioner to explain about the same is certainly unwarranted.

14. Further more, as can be seen form the record this is the first event of misconduct for which Petitioner faced enquiry and was found guilty and for this first event of misconduct itself, the gravest punishment provided for in the standing orders i.e., dismissal from service has been imposed. This is a capital punishment which ought not to have been imposed so lightly.

15. In the given circumstances it can safely be held that the impugned order is liable to be set aside declaring it as illegal and arbitrary.

This point is answered accordingly.

16. Point No. II :

No doubt, as per the finding given in Point No. I, the impugned order whereunder Petitioner has been dismissed from service is liable to be set aside. But the fact remains that Petitioner remained absent from duty and is unable to give the accurate reason why he could not attend to the duty. It can be said so since, during the enquiry Petitioner pleaded that his mother was sick whereas in the present petition he changed his version and claimed that due to his sister suffering from cancer he could not attend to his

duties. This, inconsistent version makes his contentions unbelievable. It is an unauthorised absenteeism since he has not taken any permission/leave from his higher-ups while remaining absent from duty. Thus, Petitioner is to be awarded with appropriate punishment. But as already discussed above while deciding Point No. I, awarding punishment of dismissal from service for the very first event of misconduct is not reasonable. Hence, withholding of two annual increments without cumulative effect is reasonable punishment to be awarded to Petitioner. In case of his continuing to be guilty of the misconduct of habitual unauthorised from duties the Management may take the extreme step of 'removing from service', but not now.

17. In view of the fore gone discussion, Petitioner is to be reinstated into service consequent to the declaration that the impugned order No. SRP/PER/13.008/6164 dated 27.10.2005 as illegal and arbitrary and setting aside the same. Instead Petitioner shall be awarded with the punishment of stoppage of two annual increments without cumulative effect. He is not entitled for any back wages as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result:

In the result, petition is allowed. The impugned order SRP/PER/13.008/6164 dated 27.10.2005 is hereby declared as illegal and arbitrary and is set aside. The Petitioner shall be reinstated into service as coal cutter forthwith, with effect from 1.11.2005. He shall be awarded with the punishment of stoppage of two annual increments without cumulative effect. He is not entitled for any back wages, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 1st day of May, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2005.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, गोदावरीखन्नी के पंचाट (संदर्भ संख्या 26/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22013/1/2014–आईआर(सी–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2005.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. 26/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Godavarikhani now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the SCCL and their workmen, which was received by the Central Government on 07/07/2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-CUM-VI ADDL. DISTRICT & SESSIONS COURT, GODAVARIKHANI

PRESENT: Sri G. V. KRISHNAIAH,
Chairman-cum-Presiding Officer

Monday, the 9th day of June, 2014

INDUSTRIAL DISPUTE No. 26 OF 2013

Between :

N. Shiva Shankar, S/o. Satyanarayana,
Age 35 years, Occ: Badli Filler,
R/o. Ellandu, Dist. Khammam

...Petitioner

And

1. The General Manager,
SCCL, Srirampur Area,
Adilabad District.
2. The Managing Director, (Administration),
SCCL, Kothagudem, Dist.Khammam

...Respondents

This Industrial Dispute petition coming on before me for final hearing in the presence of Sri S. Bhagavantha Rao, Advocate, for the petitioner and Sri D. Krishna Murthy,

Advocate, for the respondents, and the matter having stood over before me for consideration till this date, the Court passed the following:-

AWARD

This petition is filed U/Sec.2-A(2) of the Industrial Disputes Act, 1947 to set aside the dismissal order of the petitioner dt. 31-03-2007 and direct the respondents company to reinstate the petitioner into service with continuity of service and other attendant benefits including full back wages.

2. The averments of the petition in brief are that the father of petitioner was an employee of respondents company and after putting 17 years of service, his father died on 5-5-1998 and the mother of petitioner was provided MMC by keeping the name in live roaster till the petitioner gets employment. After attaining the majority by the petitioner, the respondents company stopped MMC to his mother and provided employment to the petitioner on 21-3-2004 at Chennur in Adilabad District and the appointment is purely temporary with a lot of conditions and subject to availability of work, even though the petitioner discharged his duties to the fullest satisfaction of superiors upto removal from service.

3. The petitioner was issued a charge sheet in the year 2006 U/Sec. 25:25 and 25:31 of standing orders of the company and terminated from service through proc., dt. 31-3-2007 by R-1. The petitioner was sick and mentally disturbed due to his personal problems. The petitioner participated in the enquiry, but he was not permitted to cross examine the management witness. The respondent adopted unfair labour practice and victimized the petitioner. Hence, he prays for reinstatement into service with continuity of service, other attendant benefits and with full back wages.

4. The respondents filed counter denying the averments of the petition. The petitioner was appointed as Badli Filler on 22-3-2003 on compassionate grounds. He being a chronic absentee had put in only (60) muster during the year 2005. As such, he was issued charge sheet dt.15-4-2006. He was issued charge sheet earlier in the year 2005 for putting less musters in the year 2004. Taking a lenient view, he was imposed punishment of suspension for 10 days from 30-10-2006 to 8-11-2006 and advised to improve his attendance. But the petitioner did not improve his attendance and therefore once again charge sheet was issued in the year 2006. The petitioner fully participated in the enquiry proceedings on 25-4-2006. He stated that due to ill-health, he could not attend duties and remained absent. He voluntarily accepted the charges leveled against him by affixing his signatures. Enquiry was conducted duly following the principles of natural justice. The petitioner did not submit any representation to the show cause notice. The respondent put the petitioner on observation for two months to put in atleast 20 musters per month. But the petitioner failed to put in the required 20 musters per month inspite of his undertaking dt.9-12-2006. Therefore the respondent was constrained to dismiss the petitioner from service by order dt.31-3-2007, w.e.f., 1-4-2007.

5. Since the petitioner did not put in 100 musters in any year since his appointment, his case does not fall under the ambit of settlement dt.9-8-2011. Hence, his case was not reviewed. Therefore, the petition may be dismissed without granting any relief to the petitioner.

6. Heard both sides. Perused the material papers on record.

7. On behalf of the respondents, Ex.M-1 to Ex.M-12 are marked. No documents are marked on behalf of the petitioner.

8. On 10-03-2014, the counsel for the petitioner filed a Memo U/Sec.11-A of I.D., Act, stating that the petitioner is not disputing the validity of domestic enquiry. As such, arguments of both sides were heard on merits.

9. The consideration of respective contentions of the parties the following points require to be determined:-

1. "Whether this Tribunal has got jurisdiction?"
2. "Whether the punishment of dismissal of the petitioner is Justified and proportionate?"

10. **POINT NO. : 1**

As per the Judgment of the Hon'ble High Court reported in 1997 (III) LLJ (Supp.) 11 between U. Chinnappa And Cotton Corporation of India, this Court has got jurisdiction to entertain the dispute raised by the petitioner. Hence, the point is accordingly answered in favour of the petitioner.

11. **POINT NO. : 2**

The petitioner did not give any reply to the charges levelled against him. As per the charge sheet marked as Ex.M-1, he was absent for 31 days in January, 2005, 22 days in February, 2005, 18 days in March, 2005, 28 days in April, 2005, 23 days in May, 2005, 29 days in June, 2005. He was absent for total 282 days during the year 2005. As per the enquiry statement of the petitioner at page No. 5, the petitioner was suffering from hepatitis C and took treatment at Khammam from 20-5-2005 to 23-7-2005 and also taken unani treatment privately. He produced the medical certificate issued by Dr. Gorkey, Khammam for the above period. He further stated that due to ill health, he could not attend to his duties and requested the respondent to excuse him.

12. In a decision reported in DIVISION BENCH JUDGMENT OF GUJARATH HIGH COURT REPORTED IN 1982 LAB.IC.1031 BETWEEN: R.M., PARMAR VRS., GUJARATH ELECTRICITY BOARD, the following guide lines were laid down in the matter of inflicting punishment

of discharge and dismissal:-

1. In a disciplinary proceeding for an alleged fault of an employee, punishment is imposed not in order to seek retribution or to give vent to feelings of wrath.

2. The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out of warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.

3. It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter-productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.

4. In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.

5. When different categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalty available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardizing the interest of the employees the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.

6. It cannot be over looked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the court and avail the costly time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.

7. When the disciplinary proceedings end in favour of the employee, the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because the extreme penalty of dismissal or removal is imposed instead of a lighter one.

8. Every harsh order of removal from service creates bitterness and arouses feeling of antagonism in the collective mind of the workers and gives raise to a feeling of class conflict. It does more harm than good to the employer as also to the society.

9. Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly, when he does not hold a sensitive post of trust (pilferage by a cashier or by a store keeper from the stores in his charge, for instances, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity (and even tax evasion or possession of black money is not considered to be dishonorable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passed under the name of kleptomania when committed by the rich.

13. Under these circumstances considering the fact that the petitioner produced medical certificate for the period from 20-05-2005 to 23-7-2005 before the enquiry

officer, I hold that there is justifiable cause for the petitioner to remain absent from duty during the above two months period. Since the petitioner was given compassionate appointment in place of his father and since he worked in the company for the short period of nearly 3 years only, I hold that dismissal of the petitioner from service is not justified and disproportionate. I further hold that denial of entire back wages and entire service of the petitioner will be sufficient punishment and ordering for his reinstatement as "Afresh Badli Filler", would meet the ends of justice.

14. In the result, the order of dismissal dt.31-03-2007 marked as Ex.M-10 is set aside and the respondents are directed to reinstate the petitioner into service as "Afresh Badli Filler" and he shall be subjected to medical test for the post. The petitioner is not entitled to any back wages, continuity of service and any other attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 9th day of June, 2014.

G. V. KRISHNAIAH, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses Examined

For workman:-	For Management:-
-Nil-	-Nil-

EXHIBITS

For workman:-

-Nil-

For Management:-

Ex.M-1	Dt. 15-04-2006	Charge sheet
Ex.M-2	Dt. 25-04-2006	Enquiry findings
Ex.M-3	Dt. —	Enquiry report
Ex.M-4	Dt. 22-05-2006	Counseling notice with the endorsement of the petitioner.
Ex.M-5	Dt. 24-05-2006	Undertaking letter given by the petitioner assuring to put minimum 20 musters per month.
Ex.M-6	Dt. 06-09-2006	Undertaking given by the petitioner during counseling.
Ex.M-7	Dt. 05-09-2006 19-10-2006	Show cause notice
Ex.M-8	Dt. 02-12-2006	Letter issued to petitioner by the respondent for improve attendance.
Ex.M-9	Dt. 09-12-2006	Reply submitted by the petitioner giving assurance to improve attendance.
Ex.M-10	Dt. 31-03-2007	Dismissal order, x.copy
Ex.M-11	Dt. 16-04-2007	Copy of mercy appeal of petitioner.
Ex.M-12	Dt. 20-12-2007	Letter of respondent confirming dismissal order.

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2006.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 117/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22013/1/2014–आईआर(सी–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2006.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad (I.D. No. 117/2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 07/07/2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: - SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 15th day of May, 2014

INDUSTRIAL DISPUTE L.C.No. 117/2005

Between :

Sri S. Surendra Paul, S/o Hukumchand,
R/o C/o Smt. A.Sarojana, Advocate,
Flat No.G-7, Rajeshwari Gayatri Sadan,
Opp: Badruka Girls Jr.College,
Kachiguda, Hyderabad ...Petitioner

AND

1. The Director, (PA & W),
M/s Singareni Collieries Company Ltd.,
Kothagudem, Khammam Dist.,
2. The General Manager,
Singareni Collieries Company Ltd.,
Ramagundam Area –III,
Godavarikhani.
Karimnagar Dist. ...Respondents

APPEARANCE:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

This is a petition filed by Sri S. Surender Paul, the workman invoking section 2 A(2) of I. D. Act, 1947, seeking for declaring the impugned office order dated 10-04-2005 issued by the 2nd Respondent, and which upheld by the 1st Respondent by virtue the appellate order dated 20-08-2005 as illegal and arbitrary and to set a side the same consequently directing the respondent to reinstate him in to service duly granting all consequential benefits such as continuity of service, back wages and other attendant benefits.

2. The Averments made in this petition in brief are as follows :

The petitioner was appointed as Operator Trainee, Category –V, in the Respondent Company w.e.f. 15-5-1990 and was posted as Operator Grade – III in Excavation and subsequently promoted as EP Operator Exc. Cat."B" w.e.f. 1-3-1997 considering his hard work and sincerity. While so a charge sheet dated 2-3-2004 was issued alleging misconduct of absent from duty without prior notice or permission sanctioned and an enquiry was conducted against standards procedures and the principles of natural justice. The allegations that the petitioner has been absent from duty with intermittently between January, 2003 and February, 2004. They failed to take note of the fact that during this period petitioner was under depression due to family problems and further he was serving the institution sincerely, faithfully and diligently. During the enquiry the procedure of enquiry was not explained to the petitioner. He was not given opportunity to produce his witnesses. The proceedings of enquiry was not conducted in the language known to the petitioner and the same was not explained to him in the language known to him either. The enquiry was conducted in the predetermined manner. Irrelevant evidence was relied upon. Neither the findings of the Enquiry Officer nor the impugned order does not contain any reasons much less valid. The enquiry officer grossly erred in holding the charges as proved, disciplinary authority merely accepted the said findings without considering the submission of the petitioner and passed the impugned order. Even the appellate authority passed the orders rejecting the appeal preferred by the petitioner against the impugned order, in a routine and mechanical manner petitioner sole breadwinner of his family. As a result of his dismissal from service the hole family lost their lively hood. Assuming without admitting that the enquiry conducted is correct and proper the punishment of dismissal from service is too harsh and excessive and disproportionate in nature. Therefore the petitioner craves indulgence of the court to modify the punishment imposed to any lesser penalty so as to survive himself and to look after his family. Hence, this petition.

3. **Respondents filed their counter with the averments in brief as follows :**

The petitioner straight-away approached this Tribunal invoking section 2 A(2) of I.D. Act, 1947 though the state amendments is not applicable to the dispute where appropriate Government is Central Government. Thus this petition is not maintainable. The contention of the Petitioner that due to depression he was absent intermittently between January, 2003 and February, 2004 is not correct. He was habitually absent from duty. He put in 230 musters in the year 1999, 132 musters in 2000, 100 musters in 2001, 102 musters in 2002, 62 musters in 2003, 51 musters in 2004 and NIL musters up to 12-4-2005. Thus his actual musters were very low. The contention of the petitioner that the enquiry was conducted in predetermine manner without giving any opportunity to him and with out explaining the procedure of enquiry are all incorrect. The procedure of enquiry was duly explained to him at every stage of enquiry in Telugu. Full and fair opportunity to produce his witnesses as well as documentary evidence was given to the petitioner, but he failed to avail of the same. He stated that he got no documents. He admitted that he absented from duty. The enquiry officer considered the evidence adduced on record and gave his reasoned report. Petitioner never raised any doubts regarding the documents produced for the management and did not cross-examine the management witnesses. The disciplinary authority as well as appellate authority considered the matter in detail including the past record of the petitioner while arriving at their respective decision. The production result of the respondent company depending upon the overall attendance and performance of all their employees including workmen. The unauthorized absence creates sudden void, which at time is very difficult to fill up and the planned schedule get suddenly disturbed without prior notice causing much inconvenience and hardship to the respondent company. Hence, respondent company is compelled to take severe action against the unauthorized absentees. The petition is liable to be dismissed.

4. A memo has been filed for the petitioner reporting that petitioner does not challenge the validity of domestic enquiry. In the light of the said memo this court held that the domestic enquiry conducted in this case is valid, by virtue of the order dated 23.3.2009.

5. Heard the arguments of either party u/s 11 (A) of the ID Act, 1947.

6. The points that arise for determination are :

I. Whether the impugned order of the 2nd Respondent dated 10.4.2005 which was confirmed by the 1st respondent in the appellate order dated 20-08-2005 is liable to be set a side ? If so, on what grounds.?

II. To what relief petitioner is entitled to ?

7. Point No.1: It is an admitted fact that the petitioner remained absent from duty during the years January 2003 and February, 2004 as mentioned in the charge sheet which has been raised against him invoking standing orders 25.25 and 25.31. It is also an undisputed fact that the petitioner has not got sanctioned any kind of leave for this absented period. But, it is his claim that there is sufficient cause for him to be absent from duty and inspite of his explaining the same and deposing of the same the enquiry officer and the disciplinary authority failed to consider it.

8. It is not the contention of the petitioner that he gave any explanation to the charge sheet, though it was called for. So there was no possibility for the disciplinary authority to know whether there was any reasonable cause for the absence of the petitioner, before ordering the domestic enquiry. For the first time, while making his statement before the enquiry officer during the domestic enquiry, the petitioner stated that due to tension and family burden and also health problems of motions and also since his father who was working at area hospital and who opted for voluntarily retirement expired but none of his brothers have since been provided employment in the company which are all added to his tension, petitioner could not concentrate on duty and have been frequently absent from duty.

9. The above referred statement of the petitioner has been accepted by the management, since the presenting officer who represented the management during the domestic enquiry has not subjected the petitioner to any cross examination. But, in the enquiry report no reference at all has been made to the various reasons for his absence given by the petitioner in his statement made during the enquiry. Since the petitioner has given some reasons they ought to have been considered by the enquiry officer and for the reasons given they ought to have been either accepted or rejected. Especially when the management accepted the truth of the said reasons by not subjecting the petitioner to any cross examination, totally ignoring the same on the part of enquiry officer while deciding the guilt or other wise of the petitioner for the charges, is certainly un warranted.

10. As can be gathered from the impugned order of the 2nd respondent / disciplinary authority, the disciplinary authority also failed to consider the pleas of the petitioner in any manner. Same is the case with the Appellate authority.

11. When the management has chosen not to dispute with the correctness of contentions of the petitioner regarding the cause for his absenteeism, by not subjecting the petitioner to cross-examination during the domestic enquiry, his contentions shall be given appropriate weight while arriving at conclusions in this case.

12. Just because there are tensions in the family and there are minor health problems like motions petitioner ought not to have been so irregular to duties as he has been in this case. But considering the fact that he and his family underwent great shock and pain due to the demise of his father which appears to have lead to financial constraints also since there was no compassionate appointment to any of the his brothers from the respondent company though his father died while in harness, it cannot be said that there is no reason at all for the absence of the petitioner from duty.

13. In the given circumstances petitioner is liable to be awarded with punishment for the unauthorized absenteeism but considering all the circumstance stated above one can clearly see that awarding of the gravest punishment awarded for in the standing orders i.e., dismissal from service is not just and reasonable. This can be said so since it is not the contention of the respondent that there was any prior occasion of conducting any domestic enquiry against the petitioner and awarding of any kind of punishment to him. This is the first and only enquiry conducted against him charge sheeting him. In this first and only enquiry itself the gravest punishment of dismissal from service which can be termed as capital punishment has been awarded. It cannot be considered as just and reasonable and therefore it is to be set a side and is to be interfered with.

This point is answered accordingly.

14. Point No. II : In view of the Finding given in point No.1 the impugned order of the 2nd respondent dated 10-4-2005 which has been confirmed by the Appellate order dated 20-08-2005 given by the 1st respondent is liable to be set a side. Consequently petitioner to be reinstated into service. The gravest punishment awarded vide the impugned order is found to be unreasonable but considering the circumstances of the case and the nature of reasons given by the petitioner for his absence, to discourage him to repeat such conduct in future and to promote regularity in attending the duties on his part, alternative punishment is to be awarded. In the circumstance of the case withholding of two annual grade increments without cumulative effect is the just and reasonable punishment to be awarded. The petitioner otherwise is entitled for continuity of service back wages and all other attendant benefits.

This point is answered accordingly.

RESULT:

In the result the petition is allowed. The impugned order of the 2nd respondent dated 10-04-2005 which has been confirmed by the 1st Respondent in the appellate order dated 20-08-2005 where under the petitioner has been dismissed from service, is hereby set a side. The petitioner shall be reinstated into service forthwith. He is entitled for continuity of service from 10-04-2005, as alternative petitioner is awarded with the punishment of

withholding of two Annual Grade Increments without cumulative effect. The petitioner is entitled for back wages and all other attendant benefits.

Award is passed accordingly. Transmit.

Typed to my dictation by L.D.C-cum-Typist and correct by me on this the 15th day of May, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2007.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 120/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22013/1/2014–आईआर(सी–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2007.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 120/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 07/07/2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: - SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 26th day of May, 2014

INDUSTRIAL DISPUTE L.C. No. 120/2006

Between :

Sri Seelam Saraiah,
S/o Venkataiah,
C/o Smt. A. Sarojana, Advocate,
Flat No. G-7, Ground Floor,
Rajeshwari Gayatri Sadan,
Opp : Badruka Jr. College for Girls,
Kachiguda, Hyderabad.

...Petitioner

AND

1. The General Manager,
   M/s. Singareni Collieries Company Limited,
   Mandamarri Area, Post : Kayankhani,
   Adilabad District.
2. The Dy. Chief Mining Engineer,
   M/s. Singareni Collieries Company Limited,
   KK-1 Incline, Mandamarri Area,
   Post : Kalyankhani, Adilabad District.

...Respondents

APPEARANCES:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

This is a petition filed by Sri Seelam Saraiah the workman invoking Sec.2A(2) of the Industrial Disputes Act, 1947 seeking for declaring the impugned office proceeding No.P/MM/7/2/01/4279 dated 14.9.2001 issued by the 1st Respondent as illegal and arbitrary, and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all attendant benefits such as continuity of service back wages, etc.

2. **The averments made in the petition in brief are as follows :**

Petitioner was appointed as badli filler in the year 1986. Charge sheet dated 13.2.2001 was issued alleging that Petitioner frequently remained absent from duty during the year 2000 and that it amounts to misconduct under company's Standing Orders No.25.25. Petitioner submitted his explanation on 16.2.2001, explaining the reasons for his inability to be regular for his duties during the year 2000. Without considering the same, an enquiry was conducted wherein Petitioner was not given any valid opportunity. Basing on which the impugned proceeding was issued dismissing the Petitioner from service with effect from 26.9.2001 vide office order dated 14.9.2001. The procedure of the enquiry was not explained to the Petitioner though Petitioner is an illiterate. Thus, Petitioner could not participate in the enquiry effectively. The enquiry was conducted in the language not known to the Petitioner which caused prejudice to the Petitioner. None of the documents relied upon by the Enquiry Officer was furnished to the Petitioner. The Enquiry Officer has not followed the basic principles of law, leave about the principles of natural justice. During the enquiry Petitioner explained that due to his ill-health and other family problems, he could not attend to his duties. But, the same

were not considered by the Enquiry Officer while holding the charges as proved. While issuing the impugned order the Disciplinary Authority also did not consider the submissions made by the Petitioner. Exclusively relied upon the findings of the Enquiry Officer the impugned order was passed in a cryptic manner. Petitioner is the only earning member of his family. As a result of the impugned order he and his family members are deprived of livelihood. Petitioner is not employed elsewhere after the date of impugned order. Hence, the petition.

3. **Respondent filed his counter with the averments in brief as follows :**

Sec.2A(2) of the Industrial Disputes Act, 1947 is not applicable to the Petitioner since appropriate government is central government but not state government. The habitual unauthorised absenteeism need not be condoned as per the mandate of the Hon'ble the Apex Court. During the calendar year 2004 Petitioner put only 81 musters as such the charge sheet was issued under Standing No. 25.25 which reads, "Habitual late attendance or habitual absence from duty without sufficient cause". Petitioner gave his explanation dated 16.2.2001 which was found not satisfactory.

His attendance particulars till the year 2000 are as under:

Year	Musters
1995	046
1996	100
1997	138
1998	139
1999	148
2000	082
2001 (up to August)	059

Thereafter the enquiry was ordered. Petitioner fully participated in the enquiry. He was given free fair and full opportunity during the enquiry. Before commencing the enquiry the Enquiry Officer explained the procedure of the enquiry in Telugu to the Petitioner. Petitioner did not opt to have defence assistant. He expressed no objection for recording the proceedings of the enquiry in English. The said proceedings were conducted in Telugu and were explained to the Petitioner in Telugu, the language to which Petitioner is acquainted. He voluntarily admitted the charges levelled against him and pleaded guilty of misconduct. Petitioner did not preferred to cross examine the Management witnesses. He did not submit any documents in support of his statement, that he was absent due to ill-health. Basing on the evidence made available the Enquiry Officer found the Petitioner guilty of the charges levelled against him. The Respondent got a well established chain of hospitals in all its areas to cater to the health requirements of its employees. Further, Respondent company has rules and regulations to refer the cases of complicated diseases to the hospitals like Osmania General Hospital, Gandhi Medical Hospital and Nizam's Institute of Medical Sciences. Petitioner is fully aware of the same but he has not availed the facilities. The explanation given by the Petitioner for the show-cause notice against the enquiry proceedings and enquiry report also was found not satisfactory. The contention of the Petitioner that the enquiry was conducted as a formality and with predetermined nature and that the contentions of the Petitioner were not considered by the Enquiry Officer and Disciplinary Authority are all incorrect. Petitioner did not produce any documents to substantiate his alleged ill-health. The punishment imposed is not disproportionate to the charges levelled. Due to the absenteeism the production results will be adversely affected. Hence, the Respondent company is compelled to take severe action against the unauthorised absentees like the Petitioner. Petition is liable to be dismissed.

4. Learned counsel for the Petitioner filed a memo stating that Petitioner is not disputing with the validity of the domestic enquiry conducted in this case. There on by virtue of order dated 17.2.2009 this court held that the domestic enquiry conducted in this case is valid.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947. Written arguments are also filed for the Petitioner and the same are received and considered.

6. **The points arise for determination are :**

I. Whether the impugned order No. P/MM/7/2/01/4279 dated 14.9.2001 is liable to be set aside? If so, on what grounds?

II. To what relief the Petitioner is entitled for?

7. **Point No. I :**

It is an admitted fact that the Petitioner has been absent from duty unauthorizedly during the charge sheeted period. This can be said so since admittedly, he failed to take any kind of leave or permission, while remaining absent from duty. Standing Orders 25.25 of the Respondent company provides that: "habitual late attendance or habitual absence from duty without sufficient cause" amounts to misconduct. Therefore, mere absent from duty by itself does not become misconduct. It must be without sufficient cause. Therefore, now it is to be verified whether there is any sufficient cause for the absence of the Petitioner from duty. It is his consistent plea that due to his sickness and also family problems he could not attend to the duties. He stated while making his statement during the Departmental enquiry that for his undiagnosed sickness which was causing giddiness and other problems to him he took treatment from the Respondent company's hospitals and also from other hospitals. No doubt, he did not produce any medical record but, Respondent could not deny the truth of the contention of the Petitioner that he took treatment from company's hospitals. Apart from it, the Petitioner elaborated the family problems due to which he could not

attend to his duties, by stating that his mother expired in the year 2000 and as he got family burdens like performing his sister's marriage which he performed in April, 2000, due to which he could not attend to the duty during the charge sheeted period. As can be gathered from the cross examination to which he has been subjected to for the Management, the Management is not denying the truth of these contentions. In the given circumstances it can not be said that there is no sufficient cause for the absence of the Petitioner from duty. The only lapse on his part is not reporting sick and not informing his superiors before remaining absent from duty.

8. But, as can be gathered from the material on record, Petitioner has put in long service of 11 years in the Respondent organization and only due to the above referred causes he became irregular during the charge sheeted period. Further more, he consistently pleaded with the Disciplinary Authority as well as during the enquiry that he realized his mistakes and that he would be regular to duties hitherto.

9. It is not the contention of the Respondent that Petitioner has been a habitual offender of misconduct of this nature and that there were any previous occasions of imposing punishment against him. This is the first and only instance of misconduct which gave raise to cause of action to conduct enquiry and award punishment to the Petitioner. But, for the very first event of this nature, the gravest possible punishment available in the Standing Orders i.e., dismissal from service has been awarded to the Petitioner by the Disciplinary Authority.

10. It is the contention of the Management that the musters put in by the Petitioner during the previous years to the charge sheeted period have been taken note off while awarding punishment. This is not proper and reasonable. The past conduct which becomes relevant while awarding punishment is the previous proven misconduct but not the allegations which were merely made without giving any opportunity to the workman to explain. In the present case as already discussed above, there is no proven misconduct. The allegation regarding putting in less musters during the period prior to the charge sheeted period is in the status of mere allegation only for the reason that Petitioner has not been informed of the exception taken by the Management regarding the said conduct and his explanation has not been called for, to know whether he is actually accepting the truth of the said allegation. In the given circumstances the Disciplinary Authority taking such alleged previous conduct into consideration while awarding punishment is not at all reasonable.

11. In view of the fore gone discussion it can safely be held that the very finding of the Enquiry Officer that Petitioner is guilty of misconduct under sto 25.25 itself is not acceptable and further it is to be said that the punishment awarded is grossly disproportionate to the proven misconduct. Thus, the impugned order No.P/MM/7/2/01/4279 dated 14.9.2001 is liable to be set aside.

This point is answered accordingly.

12. **Point No. II :**

No doubt, as per the finding given in Point No.I, the impugned order whereunder Petitioner has been dismissed from service is liable to be set aside. But the fact remains that Petitioner remained absent from duty though got sufficient reason for doing so but, there is lapse on his part since he failed to inform his superiors at any point of time before or during the period of his absence from duty.

13. It is an unauthorised absenteeism since he has not taken any permission/ leave from his higher-ups while remaining absent from duty. Thus, Petitioner is to be awarded with appropriate punishment for such lapse only. But as already discussed above while deciding Point No.I, awarding punishment of dismissal from service for the very first event of misconduct which not even completely proved, is not reasonable. Hence, withholding of one annual grade increment without cumulative effect is reasonable punishment to be awarded to the Petitioner.

14. In view of the fore gone discussion, Petitioner is to be reinstated into service consequent to the declaration that the impugned order No.P/MM/7/2/01/4279 dated 14.9.2001 as illegal and arbitrary and setting aside the same. Instead Petitioner shall be awarded with the punishment of stoppage of one annual grade increment without cumulative effect. He is entitled for 50% of back wages only as he is found to be liable for punishment, though it is the lesser punishment than the one imposed to him by virtue of impugned order. He is entitled for all other attendant benefits.

This point is answered accordingly.

Result :

In the result, petition is allowed. The impugned order No.P/MM/7/2/01/4279 dated 14.9.2001 is hereby declared as illegal and arbitrary and is hereby set aside. The Petitioner shall be reinstated into service as badli filler forthwith, with effect from 26.9.2001. Heshall be awarded with the punishment of stoppage of one annual increment without cumulative effect. He is entitled for 50% of back wages only, but he is entitled for all other attendant benefits.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 26th day of May, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2008.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 111/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22013/1/2014–आईआर(सी–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2008.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 111/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the SCCL and their workman, which was received by the Central Government on 07/07/2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT : SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 13th day of May, 2014

INDUSTRIAL DISPUTE L.C.No. 111/2006

Between:

Sri S. Rajendra Prasad,
S/o Rayamallu,
R/o C/o Smt. A. Sarojana,
Advocate, Flat No. G7,
Rajeshwari Gayatri Sadan,
Opp: Badruka Girls Jr. College,
Kachiguda, Hyderabad ...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Limited,
Srirampur (P) Area, Srirampur, Adilabad Dist.,
Kothagudem, Khammam, Dis.,

2. The Colliery Manager/SOM,
RK-7, Incline, Singareni Collieries
Company Limited,
Srirampur, Adilabad ...Respondents

APPEARANCES:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : Sri M. V. Hanumanth Rao, Advocates

AWARD

This is a petition filed by Sri S. Rajendra Prasad, the workman invoking section 2 A (2) of I. D. Act, 1947, seeking for declaring the impugned office order dated 25-12-2001 issued by the 1st Respondent as illegal and arbitrary and to set a side the same consequently directing the respondent to reinstate him in to service duly granting all consequential benefits such as continuity of service, back wages and other attendant benefits.

2. **The Averments made in this petition in brief are as follows :**

The petitioner was appointed as Badli filler on 31-3-1999 and since then he has been working at R.K. 7 incline while so the charge sheet dated 29-5-2001 was issued alleging that the petitioner was absent from duty without sanction of leave or sufficient cause from 25-2-2000 to 28-5-2001. As such it amounts to misconduct under company standing order No. 21.31. The petitioner has submitted his explanation on 27-6-2001. Without considering the merits of the submission made by the petitioner enquiry was conducted. During the enquiry proper opportunity was not given to the petitioner. Procedure of the enquiry was not explained to the petitioner. He was not offered the assistance of any defence assistance. The enquiry officer grossly erred in holding the charges as proved in his enquiry report. The said findings are not supported by any reasons much less valid. 1st Respondent/ Disciplinary Authority failed to apply his mind independently and failed to consider the submission made by the petitioner arrived at wrong conclusion and passed the inclined order dismissing the petitioner from service. The conduct of the enquiry and the action of the disciplinary authority indicate that they proceeded with predetermined manner to punish the petitioner. The documents relied upon by the Enquiry Officer were neither shown to the petitioner not supplied to him. He was not asked to produce his witnesses. The evidence of the petitioner remained unrebutted. Despite neither Enquiry Officer not the disciplinary authority considered his submission. The impugned order also does not indicate any reasons for the findings much less valid. Even other wise punishment of dismissal from service is too harsh, excessive and disproportionate to the charges alleged. Petitioner is to look after his aged mother, unemployed elder brother and two unmarried sisters and he is only breadwinner of the family. Due to his dismissal

from service the entire family became destitute. Petitioner remained unemployed all along from 25-12-2001. Hence, the petitioner craves the indulgence of the court to modify his punishment to any of lesser penalty so as to survive himself and took after his family. Hence, this petition.

3. **Respondents filed their counter with the averments in brief as follows :**

The petitioner straight-away approached this Tribunal invoking section 2 A (2) of I.D. Act, 1947 though the state amendments is not applicable to the dispute where appropriate Govt. is Central Government. Thus this petition is not maintainable. Since the petitioner was absent from duty without sanction of leave or sufficient cause from 25-2-2000 to 28-5-2001 charge sheet was issued against him. He gave his explanation, which was not satisfactory. Hence, departmental enquiry was ordered and the same was conducted incompliance of principals of natural justice. The petitioner was participated in this enquiry fully. As the charges have been proved, inconsideration the enquiry findings as well as the submission made by the petitioner, the disciplinary authority has passed the impugned order which is just and reasonable. The petitioner was given due opportunity during the enquiry. He informed that he would not avail the services of any defence assistance. The procedure of the enquiry was duly explained in Telugu. Though opportunity was given to him, he did not produce any witnesses on behalf. All the enquiry proceedings was explained to the petitioner in Telugu Language and after fully under standing the same he put his Thumb mark. The contention of the petitioner was that the proceedings of the enquiry officer as well as the disciplinary authority were conducted in predetermined notion is incorrect. The petitioner pleaded that on account of sickness he could not be regular to his services and that the evidence remained unrebutted is all incorrect. During the year 1999 his attendance was 59 days and in the year 2000 it was 6 days and up to May 2001 it was NIL. The same resulted into taking disciplinary action against him. Such an unauthorized absence creates sudden void which at time is very difficult to fill up and the planned schedules get suddenly disturbed causing much inconvenience and loss to the company. Hence, respondent company is compelled to take server action against the authorized absentees. The petition is liable to be dismissed.

4. Learned Counsel for the petitioner filed a memo stating that petitioner does not challenge the validity of domestic enquiry and that the case will decided on the basis of material available on record. In view of this memo, this court held that the Domestic Enquiry conducted in this case as valid by virtue of order dated 12-2-2001.

5. Heard the arguments of either parties u/s 11(A) of I.D. Act, 1947.

6. The points that arise for determination are :

I. Whether the impugned order of the 1st Respondent dated 25.12.2001 is liable to be set a side ? If so, on what grounds.?

II. To what relief petitioner is entitled to ?

7. **Point No. 1 :** It is an admitted fact that the petitioner remained absent from duty from 25-2-2000 to 28-5-2001 for the period for which the charge sheet has been raised against him invoking standing order 21.31. It is also an undisputed fact that the petitioner has not got sanctioned any kind of leave for this absented period. But, it is his claim that there is sufficient cause for him to be absent from duty and inspite of his explaining the same and deposing of the same the enquiry officer and the disciplinary authority failed to consider it.

8. As can be seen from the material on record, it is the contention of the petitioner that due to severe Knee joint pains he was unable to walk and was admitted Govt. Community Hospital, Peddapally for treatment and for this reason he could not attend to his duty and also he was unable report sick either. He also claimed that he is sole breadwinner of the family and begged for giving another opportunity promising that he would be regular for duty. During the enquiry proceedings he made a statement before the enquiry also to the same effect. As can be gathered from the cross examination to which petitioner was subjected to by the presenting officer who conducted the case on behalf of the management during the enquiry, the management has not actually disputed with the truth of the contentions of petitioner regarding his sickness. They are aggrieved for the reasons that petitioner remained absent from duty for long period without duly sanctioned leave, only. Thus it is very much clear that the management also is not disputing with the fact that there is sufficient cause for the petitioner being absent from duty during the period complained of in the charge sheet.

9. In view of the foregone discussion one can reasonably understand that the conduct of the petitioner does not fall under the category of misconduct mentioned in the standing orders as there is sufficient cause for the prolonged absence of the petitioner from duty. But of course, petitioner is at fault for some how or other not conveying to the management regarding his inability to attend to his duties at the relevant time.

10. But, the 1st respondent has chosen to award the gravest punishment provided for in the standing orders, i.e., dismissal from service. It is not justified for the reason that as already held above there is sufficient cause for the petitioner being absent from duty during the charge sheeted period and the said cause is not in dispute. If at all the petitioner would have been punished, it must have been for his not reporting to the management regarding his inability to attend to his duties only but, not for the

absenteeism itself. For such conduct the appropriate punishment would be either censure or with holding an Annual Grade Increment. But unfortunately without considering all these aspects petitioner has been dismissed from service by virtue of the impugned order. Thus it is liable to be set a side.

This point answered accordingly.

11. **Point No. II :** In view of the finding given Point No.1 the impugned order of the 1st Respondent dated 25-12-2001 where under the petitioner has been dismissed from service is liable to set a side. Consequently he is to be directed to be reinstated into service forthwith.

12. Considering the fact that unreasonably Petitioner is made to suffer unemployment all these years there is no need for awarding any lesser punishment either for the lapse of not reporting to authority regarding his inability to attend to duty at the relevant time, either. In this regard the ailment of the Petitioner which is not in dispute is also being taken note of.

13. Petitioner is entitled for continuity of service from 25-12-2001, back wages and all other attendant benefits also.

This point is answered accordingly.

RESULT :

In the result the petition is allowed. The impugned order of the 1st respondent dated 25-12-2001, where under the petitioner has been dismissed from service, is hereby set a side. The petitioner shall be reinstated into service forthwith. He is entitled for continuity of service from 25-12-2001, back wages and all other attendant benefits.

Award is passed accordingly. Transmit.

Typed to my dictation by the L.D.C-cum-Typist and corrected by me on this the 13th day of May, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2009.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 48/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22013/1/2014–आईआर(सी–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2009.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad (Ref. No. 48/2006) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the SCCL and their workmen, which was received by the Central Government on 07/07/2014.

[No. L-22013/1/2014-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: - SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated this the 13th day of May, 2014

INDUSTRIAL DISPUTE L.C. No. 48/2006

Between:

Sri Kota Ravi, S/o Mallaiah,
R/o C/o Smt. A.Sarojana, Advocate,
Flat No.G-7, Rajeshwari Gayatri Sadan,
Opp : Badruka Girls Jr. College,
Kachiguda, Hyderabad ...Petitioner

AND

1. The General Manager,
M/s Singareni Collieries Company Ltd.,
Mandamarri, Adilabad Dist.,
2. The Colliery Manager, KK-5A Incline,
Singareni Collieries Company Ltd.,
Mandamarri, Adilabad Dist. ...Respondents

APPEARANCES:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

This is a petition filed by Sri Kota Ravi the workman Invoking section 2 A(2) of I. D. Act, 1947, seeking for

declaring the impugned office order dated 05-11-1998 issued by the 1st Respondent as illegal and arbitrary and to set a side the same consequently directing the respondent to reinstate him in to service duly granting all consequential benefits such as continuity of service, back wages and other attendant benefits.

2. **The Averments made in this petition in brief are as follows :**

The petitioner was appointed as Badli filler on 8-2-1996 by way of dependent employment. Charge sheet dated 30-5-1998 was issued alleging unauthorized absenteeism without any sufficient cause during the year 1997. Petitioner submitted his explanation on 24-7-1998 pleading that as he has been suffering with abdomen tuber culosis, he was under going treatment and submitted medical certificate also. But without considering the same and with predetermined notion a departmental enquiry was conducted. During the said enquiry no opportunity much less valid was given to the petitioner. He was not explained the procedure of the enquiry. The assistance of defence assistant was not offered to him. He was not given opportunity to produce his witnesses. Petitioner was not given opportunity to cross examine the management witnesses. The enquiry proceedings was not conducted in the language known to the petitioner and the same were not explained in the language known to him. Though the enquiry officer framed the issue whether the charge alleged against the petitioner with regard to the absenteeism without sufficient case is proper or not, the said issue was not considered properly and objectively. The medical Certificate submitted by the petitioner was not doubted but, the enquiry office has not considered it objectively. As a result of improper conduct of enquiry petitioner was put to grave prejudice. The disciplinary authority also has not; considered the submissions made by the petitioner while arriving at the conclusion. He failed to apply his mind independently while issuing the impugned order of dismissal of the petitioner from service. Since he was dismissed from service, petitioner suffered many hardships. Due to financial stringencies. Petitioner could not approach the Tribunal immediately. He is sole breadwinner of the family and the entire family is suffering due to petitioner loosing his job. Even other wise punishment of dismissal from service is too harsh, excessive and disproportionate to the charges alleged. Petitioner is to look after his aged mother, unemployed elder brother and two unmarried sisters and he is only breadwinner of the family. Due to his dismissal from service the entire family became destitute. Petitioner remained unemployed since his dismissal. Hence, the petitioner craves the indulgence of the court to modify his punishment to any of lesser penalty so as to survive himself and took after his family. Hence, the petition.

3. **Respondents filed their counter with the averments in brief as follows :**

The petitioner straight-away approached this Tribunal invoking section 2 A(2) of I.D. Act, 1947 though the state amendments is not applicable to the dispute where appropriate Govt. is Central Government. Thus this petition is not maintainable. Petitioner has put in only 3 musters during the year 1997. Thus charge sheet was issued on 30-5-1998 under standing order No. 25.25 which reads as:-

"25.25":- Habitual late attendance or habitual absence from duty without sufficient cause".

As a responsible employee petitioner ought to have informed to the unit authority / area authority about his ill health and its seriousness and also his constraints in attending to duty and obtain permission to under take treatment in private hospital or other wise he should report sick in colliery hospital for under going treatment. He should kept sanctioned loss of pay leave instead of remaining absent duty on his own. But on receipt of charge sheet he gave written explanation stating that he suffered from Tuber Culosis abdomen from February to 15th December, 1997 enclosing medical certificate. Except that certificate no other evidence is produced regarding the aliment. Respondent Company operating his own Dispensary Area Hospital and main Hospital for extending medical aid to its employees and their dependents. If case demands Respondent company refer the patient to Super specialty Hospital, Hyderabad for better treatment. There is no need for petitioner under go treatment elsewhere. Respondent Company cannot entertain the medical certificate like the one produced by the petitioner. The enquiry was conducted in fair manner giving every opportunity to the petitioner to conduct his defence. The principals of natural justice were complied with. Petitioner participated in the proceedings fully. Petitioner was given opportunity cross examine the management witness. But he did not avail the same. The proceedings were very much recorded in his presence and satisfied with same he put his signature. At every point of time the enquiry officer explained the contents of the enquiry proceedings to the petitioner in Telugu. He admitted his misconduct and pleaded guilty while giving his deposition. He never raised any objection on the conduct of the enquiry either at the time of enquiry or when the enquiry report and proceedings were supplied to him. He made his representation dtd: 20-10-98 but, he did not raise any objection either on the enquiry proceedings or on the enquiry findings. After lapse of 7 years from the date of dismissal he is making baseless allegations. His attendance during the years 1996, 1997 and 1998 was very poor. Considering the same the impugned order was passed. The respondents not aware of the financial stringencies and hardship of the petitioner. He is to substantiate the same. The contentions of the petitioner is that the enquiry officer as well as the

disciplinary authority have conducted the respective proceedings in pre determined notion is far from truth. Unauthorized absenteeism creates sudden void which at time is very difficult to fill up and the planned schedules get suddenly disturbed causing much inconvenience and loss to the company. Hence, respondent company is compelled to take server action against the authorized absentees. The petition is liable to be dismissed.

4. Petitioner filed a memo stating that he is conceding to the legality and validity of domestic enquiry conducted in this case. Basing on the said memo this court held that domestic enquiry conducted in this case as valid by virtue of order dated 26.6.2009.

5. Heard the arguments of either party under Sec.11A of the Industrial Disputes Act, 1947.

6. **The points that arise for determination are :**

I. Whether the impugned order of the 1st Respondent dated 5-11-1998 is liable to be set a side ? If so, on what grounds.?

II. To what relief petitioner is entitled to ?

7. **Point No. I :** It is an admitted fact that the petitioner remained absent from duty during the year 1997 for the period for which the charges sheet has been raised against him invoking standing orders 25.25. It is also an undisputed fact that the petitioner has not got sanctioned any kind of leave for this absented period. But, it is his claim that there is sufficient cause for him to be absent from duty and inspite of his explaining the same and deposing of the same the enquiry officer and the disciplinary authority failed to consider it.

8. It is the contention of the petitioner that he was suffering from Tuber Culosis abdomen and was under going treatment and thus he was unable to attend to his duty during the year 1997. It is an admitted fact that he produced a medial certificate also to substantiate his contention. Even during the enquiry he made a consistent statement regarding his sick ness. He gave an explanation for not taking treatment from company's Hospital stating that his village is far away from Company's Hospital and there fore he took treatment from Dr. V.Vasudev Rao of Karimnagar. Though petitioner was cross examined at length for management, not even a suggestion is given to him doubting the truth of his contentions regarding his sick ness. The same would naturally give raise to an understanding that the management accepted his contentions with this regard.

9. No doubt, time and again petitioner was asked during enquiry whether he was pleading guilty or not and he answered that he was pleading guilty. But over all impression, the material on record gives is, that the plea of guilt made by the petitioner is a qualified plea only because all along he has been explaining the reason for his absence as his sick ness i.e, Tuber Culosis abdomen. His plea of guilt there fore can be taken as limited to his unauthorized absence from duty and that he never admitted that his absence was not without sufficient cause.

10. When it is the contention of the petitioner that he suffered with Tuber Culosis Abdomen and has taken prolonged treatment for the said disease, if the respondent company is interested in culling out the truth nothing prevents them to refer the petitioner to any of the medical experts who are working for them in their various hospitals, but they have not done so. Petitioner is a poor workman. He cannot produce the medical doctor who treated him before the enquiry officer by meeting the required expenses. But, the management who is supposed to be responsible towards their employees must take all steps possible to arrive at the truth in the interest of justice to the said employee as well as the Respondent organization.

11. In view of the foregone discussion one can reasonably understand that the conduct of the petitioner does not fall under the category of misconduct mentioned in the standing order 25.25 as there is sufficient cause for the prolonged absence of the petitioner from duty. But of course, petitioner is at fault for some how or other not conveying to the management regarding his inability to attend to his duties at the relevant time which certainly resulted into inconvenience to the Respondent Management.

12. But, the 1st respondent has chosen to award the gravest punishment provided for in the standing orders, i.e., dismissal from service. It is not justified for the reason that as already held above there is sufficient cause for the petitioner being absent from duty during the charge sheeted period and the said cause is not in dispute. If at all the petitioner would have been punished it must have been for his not reporting to the management regarding his inability to attend to his duties only but, not for the absenteeism itself. For such conduct the appropriate punishment would be either censure or with- holding of Annual Grade Increment. But unfortunately without considering all these aspects petitioner has been dismissed from service by virtue of the impugned order. Thus it is liable to be set a side.

This point answered accordingly.

13. **Point No. II :** In view of the finding given Point No.1 the impugned order of the 1st Respondent dated 5-11-1998 where under the petitioner has been dismissed from service is liable to set a side. Consequently he is to be directed to be reinstated into service forthwith.

14. Considering the fact that most unreasonably Petitioner is made to suffer unemployment all these years there is no need for awarding any lesser punishment either for the lapse of not reporting to authority regarding his inability to attend to duty at the relevant time, either. In this context the serious ailment suffered by the Petitioner at the relevant time is also to be considered.

15. Petitioner is entitled for continuity of service from 5-11-1998, back wages and all other attendant benefits also.

This point is answered accordingly.

RESULT :

In the result the petition is allowed. The impugned order of the 1st respondent dated 5-11-1998 where under the petitioner has been dismissed from service, is hereby set a side. The petitioner shall be reinstated into service forthwith. He is entitled for continuity of service from 5-11-1998, back wages and all other attendant benefits.

Award is passed accordingly. Transmit.

Typed to my dictation by L.D.C-cum-Typist and corrected by me on this the 13th day of May, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2010.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 73/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22012/76/2013–आईआर(सीएम–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2010.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 73/2013) of the Central Government Industrial Tribunal/Labour Court, Hyderbad now as shown in the Annexure in the Industrial Dispute between the management of the M/s. Singareni Colleries Co. Ltd., and their workmen, which was received by the Central Government on 07/07/2014.

[No. L-22012/76/2013-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: - SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 2nd day of June, 2014

INDUSTRIAL DISPUTE I. D. No. 73/2013

Between:

The President,
(Sri Bandari Satyanarayana)
Telangana Trade Union Council,
H.No.-5-295, Indra Nagar,
Opp. Bus Stand, Mancherial,
Adilabad Dist. – 504208 ...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Limited,
Bellampalli Area, Goleti Township(P.O.)
Adilabad Dist.-504292 ...Respondent

APPEARANCES:

For the Petitioner : NIL

For the Respondent : M/s. P.A.V.V.S. Sarma &
V.S.V.S.R.S. Prasad, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/76/2013-IR(CM-II) dated 8.7.2013 referred the following dispute between the management of M/s. Singareni Collieries Company Ltd., and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action the management of General Manager of M/s. Singareni Collieries Company Ltd., Bellampalli Area, Goleti Township(P.O.), Adilabad Distt., in terminating the services of Sri Erla Saraiah, Ex-Coal Filler, Goleti-1 Inc., SCCo Ltd., Bellampalli Area with effect from 1.6.2002 is justified or not? If not, to what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 73/2013 and notices were issued to the parties.

2. The case stands posted for appearance of the Petitioner, filing of claim statement and documents by the Petitioner.

3. Petitioner called absent and there is no representation. Inspite of serving notice twice, Petitioner is not appearing and taking interest in the proceedings. In the circumstances, taking that there is no claim to be made by the Petitioner, 'Nil' award is passed.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 2nd day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2011.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 63/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22012/118/2012–आईआर(सीएम–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2011.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2012) of the Central Government Industrial Tribunal/Labour Court, Hyderbad now as shown in the Annexure in the Industrial Dispute between the management of the M/s. Singareni Colleries Co. Ltd., and their workmen, which was received by the Central Government on 07/07/2014.

[No. L-22012/118/2012-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: - SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 16th day of May, 2014

INDUSTRIAL DISPUTE No. 63/2012

Between :

The Vice-President(Sri Bandari Lingaiah),
Singareni Collieries Employees Union(CITU),
Qtr.No.T-39, SMG X Road,
Somagundem, (Via Bellampally)
Adilabad Distt. – 504251 ...Petitioner

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Bellampalli Area, Goleti Township,
Adilabad District – 504 292 ...Respondent

APPEARANCES :

For the Petitioner : None
For the Respondent : Representative

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/118/2012-IR(CM-II) dated 3.10.2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is,

SCHEDULE

"Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Bellampally area, Goleti Township, Adilabad Dist., in terminating the services of Sri Dasari Banaiah, Ex-Coal Filler, Goleti-1 Inc., w.e.f. 21.5.2007 is justified or not? To what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 63/2012 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement and documents by the Petitioner.

3. At this stage, Petitioner called absent. No representation. Inspite of issuance of two notices, both of which returned served, Petitioner is not present. Thus, taking that Petitioner got no claim to be made and that he is not interested in the proceeding, 'Nil' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Lower Division Clerk and corrected by me on this the 16th day of May, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2012.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफ. सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 20/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22012/361/2003–आईआर(सीएम–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2012.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India,, and their workmen, received by the Central Government on 07/07/2014.

[No. L-22012/361/2003-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 29th day of April, 2014

INDUSTRIAL DISPUTE No. 20/2005

Between:

Joint Secretary,
Food Corporation of India Workers Union,
58/1, Diamond Harbour Road,
Kolkata – 700023 ...Petitioner Union

AND

1. The District Manager,
   Food Corporation of India,
   District Office, 47-11-7, II Floor,
   Dwarakanagar,
   Visakhapatnam -530016.
2. The Senior Regional Manager,
   Food Corporation of India,
   Regional Office, Haca Bhavan,
   Hyderabad – 500 004 ...Respondents

APPEARANCES :

For the Petitioner : Sri Chandana Suryanarayana, Advocate

For the Respondent : M/s. B.G. Ravindra Reddy, Advocates

AWARD

The Government of India, Ministry of Labour by its Order No. L-22012/361/2003-IR(CM-II) dated 4.10.2004 the Government of India, Ministry of Labour and Employment, made a reference requiring this Tribunal to adjudicate the dispute,

> "Whether the contract between FCI Contract Cooperative Society, Bobbili and FCI Management was sham and whether the demand of FCI workers union for reinstatement/regularization of 72 workers (who were terminated with effect from 27.10.2002) in the establishment of FCI is legal and justified? If yes, to what relief the workmen are entitled?"

On receiving the said reference this Tribunal issued notices and secured the presence of both the workers union/Petitioner and the Management/Respondent. Sri Chandana Suryanarayana appeared on behalf of the Petitioner union and M/s. B.G. Ravindra Reddy, Advocates appeared on behalf of the Respondent Management with the leave of the Tribunal.

2. **The Petitioner Union has filed claim statement with the averments in brief as follows :**

Petitioner union is the only union and representative organization of the workers of FCI through out India. Food Corporation of India was constituted by an Act of Parliament (Act 37 of 1964) with the object and purpose of procuring food grains, storing and distribute the same in different parts of India including the State of Andhra Pradesh. Direct payment system was introduced in respect of the workers of different depots of Food Corporation of India in the year 1997 vide circular dated 5.11.1997. Earlier the handling work at the godowns at various depots of the said corporation was done through private contractors. There was discontentment among the labour force working under the private contractors and they demanded for abolition of contract labour system. This lead to the departmentalisation of the labour force consisting of handling Mazdoors, Sardars, Munshis/Mandals Ancillary mazdoors and hamalis at some of the depots of the corporation. This departmentalisation commenced in the year 1970 and it was introduced gradually in stages and has been extended to major ports and depots in port towns as well as the other regions including Andhra Pradesh region. Corporation is having handling labour under cooperative societies called labour contract cooperative societies in various depots of Andhra Pradesh. Such societies are formed by workers themselves. There will be no outsider. President and Secretary of the said society also will be the workmen. Respondent corporation introduced Direct payment system in respect of mazdoors, hamalis worked under labour contract cooperative societies of Charlapalli, Sanathnagar, Davaleswaram, Samarlakota, Pennada, Gimmikunta, Nidadavolu,

Tadepalligudem, Aakiveedu, Hanuman Junction, Gudiwada, Aluru, Khammam, Sattenapalli, Timancherla, Nallagunda, Chittor, Visakhapatnam, Amadalavalasa and Ongolu etc.. in Andhra Pradesh. Petitioner society is having 72 workers as members. The said union is under number 591 Food Storage Depot, Bobbili and it is of the same status of the depots mentioned above, which come under Visakhapatnam district. These 72 workers used to carry on the work at FSD, Bobbili including the hired godowns like J.K.J.R., A.M.C., since more than 30 years. They used to carry on the work most obediently and sincerely and eaking out their livelihood. The job description of DPS workers working by forming labour cooperative society, Bobbili godowns and railway siding are same. They are all doing the job of unloading of food grains from the wagons, trollys, carts and stock them in godown, unloading to wagons and loading into trucks, lorries when required, re-stocking food grains in godowns, loading stock in transport vehicles, unloading the wagons and stocking in the shed platform or ground. Making delivery to recipients duly loading and stocking in their trucks, making weighment, physical verification and standardisation, filling gunnies with food grains to the prescribed weight and stick and stock/load and make delivery and salvage the damaged food grains and such duties. While so in the year 1990 all the 72 workers whose list is annexed with the petition formed labour contract society, Bobbili under advice from Food Corporation of India and got it registered duly with the Dy. Registrar of Cooperative Society, Parvathipuram. Food Corporation of India recognised the same. They elected body of the society within the workmen and the works were carried by the said society at food storage depot and other hired godowns of Food Corporation of India at Bobbili. From time to time Food Corporation of India extended contract works to the society. All the 72 workers under the society got health approval to carry on the works and they were working since more than 30 years and since 1990 by forming the society. Without any interruption. So it is clear that the contract between Food Corporation of India and society is nothing but a sham contract and the workers of the society are workers of the Food Corporation of India. All these workers who are carrying on the works of Food Corporation of India since 30 years are entitled for introduction of direct payment system on par wit the other societies. They are all entitled for regularization of services. Originally Food Corporation of India obtained lease for a period of 99 years in respect of godowns from the railways. Thus, the said godowns became the permanent godowns of Food Corporation of India. Food Corporation of India is the absolute owner of the godowns of food storage depot, Bobbili. So they need not shift the work to any other godowns. While the godowns near railways siding at Bobbili are existing under the lease for a period of 99 years which is not yet completed. Since decades the workers of the union have been demanding for introduction of direct payment system. However, to their surprise and dismay the Management of Food Corporation of India suddenly stopped the work at food storage depot, Bobbili in September, 2002. The workers sent a representation for continuation of their work and FSD, Bobbili for which there is no action from FCI authority. However, they opened a new godown at Antipeta village in Sitanagaram Mandal, which is within 10 KMs radius from FSD, Bobbili. No prior notice was given to the workers of the Petitioner union. Thus, there is violation of the provisions of Industrial Disputes Act, 1947. Respondent high handedly engaged new labourers at Antipeta. The work was shifted to Antipeta godown. The workers of the Petitioner union agitated for their reinstatement and for continuation of their services either at FSD Bobbili or at Antipeta. The workers of any of the closed godowns all over India, have been accommodated in other depots by way of transfer, but no action has been taken in respect of the 72 workers of the Petitioner union so far and they are all suffering starvation and hunger as they become jobless. The conciliations held to settle the dispute amicably were in vain. Hence, the reference is made. The Respondent Management is to be directed to introduce direct payment system and its benefits in respect of the workers who are working for last 30 years and by forming an Food Corporation of India labour co-operative society for last 20 years at FSD, Bobbili and who are 72 in number, for reinstatement of their services at FSD Bobbili or any other godown of Food Corporation of India with full back wages.

3. **Respondent corporation filed his counter with the averments in brief as follows :**

For the purpose of storage of food grains Respondent corporation used to acquire open storage units and air strips during the peak procurement season. In this process the District Manager, Food Corporation of India, Srikakulam had acquired storage capacity of 2000 Mts spreading over an area of 30000 sft, from South Eastern Railway, Bobbili, on lease. Handling and transport work in the said depot was awarded to private contractors on open tender basis every two years. Contractor used to bring his own labourers for doing the work. The said system was discontinued from 1989/1990 as per the policy decision of the Food Corporation of India. Thereafter the handling and transport works were awarded to the labour contract cooperative society, Bobbili. Direct payment system was not introduced in Bobbili depot and it is not one of such depots notified for introduction of such system. Therefore, there can not be any comparison between depots notified for such system and Bobbili depot. The allegation that the 72 workmen were working for the past 30 years is not correct. The storage capacity of Bobbili is to handed over back to the railways as per their demand letter dated 28.2.2002 and 18.9.2002. Incidentally the contract was given for a period 2 years

i.e., from 28.7.2000 to 27.7.2002. After expiry of the said period contract was extended for further period of 3 months i.e., upto 27.10.2002. The premises was accordingly being handed over back to railways. Thus, the operations were totally closed at Bobbili depot as per headquarters instructions. The corporation has introduced a scheme to take over private godowns, through APSWC under 7 years guarantee scheme. As per the said scheme, maintenance of stocks, handling and transport operations etc. will be the responsibilities of APSWC for storage and H & T works the Food Corporation of India will pay to APSWC. APSWC offered storage accommodation at APSWC Jiyyannavalasa, Antipeta along with other investor godowns at KL Puram and other places. As a result there was no requirement for the services of the labour contract cooperative society. The persons referred to in the dispute were never employed by the Respondent at any point of time in any capacity directly. There is no relationship of employer and employee between the Respondents and the said persons. Thus, they can no not demand for reinstatement into service. Their demand for direct payment system is also baseless. There was no appointment of these persons hence, there is no termination of services either. The labour society was the contractor during the relevant point of time. Demand of the union either for reinstatement or for regularization does not arise. A suit filed by the society for its continuance and for damages for discontinuance was already dismissed and the matter became final. The claim of the Petitioner is liable to be dismissed.

4. To substantiate the contentions of the Petitioner, WW1 to WW3 were examined and Ex.W1 to W 12 were marked. On behalf of the Respondent Management MW1 was examined and Ex.M1 to M25 were marked.

5. Heard the arguments of either party. Written arguments also filed by either party and the same are received and considered.

6. **The points arise for determination are :**

I. Whether the contract between the Petitioner union and the Respondent were sham?

II. Whether the 72 workmen who are members of the Petitioner union are entitled for reinstatement/ regularization with effect from 27.10.2002 the date on which they were terminated?

III. To what relief the workmen are entitled for?

7. **Point No. I :**

As can be gathered from the material on record, by taking the land belonging to South Central Railway on permanent lease, the Respondent corporation has established their godown at Bobbili for the purpose of storage, preservation, handling and transportation etc., of the food grains. Originally all the works of the godown were being entrusted to private contractors. The various workmen who are all members of the Petitioner union and who are 72 in number were working under private contractor for this godown. Due to the policy of the Management of the Food Corporation of India the private contract system has been abolished in the year 1990 and all the workers who have been working for the godown but under private contractor until then, have been asked to formulate a society for them and accordingly Petitioner's society have been formulated by the workers and the said workers continued to work for the said godown. All these workers were subjected to the required medical tests and medical fitness certificates were issued by the Medical Officer of the Food Corporation of India i.e., the Management herein, as can be gathered from the evidence of MW1. Further, the evidence on record clearly discloses that there is employees portion as well as the employers portion of the provident fund subscriptions in respect of all these workmen are being made by these workmen and the Respondent Management. This fact also can be culled out from the evidence of MW1 apart from the evidence adduced on record for the Petitioner.

8. No doubt, no direct payment of wages system was in vogue in respect of the Bobbili godown of the Respondent. As can be gathered from the record after such system has been introduced in various other godowns of the Respondent, the Petitioner union requested the Management to extend the said benefit to the workers of the Bobbili godown also but in vain. It is the constant demand of the workmen to extend such benefit to them. While MW1 was in cross examination, he stated that the direct payment system to workers pertaining to various cooperative societies has been introduced in Andhra Pradesh and that the nature of work undertaken by the workers of Bobbili depot and that pertaining to other depots in which Direct Payment System was introduced is one and the same. Thus, it is clear that for various other workers who have formed as cooperative societies and were working for various other Food Corporation of India godowns in the state of Andhra Pradesh the direct payment system has been introduced but as far as the members of Petitioner union are concerned, it was not done. No reason could be given by the Respondent for not extending the said benefit to the Petitioner union.

9. But in any view of the matter what one can understand from all the above discussed evidence is that, the contract said to have been in existence between the Petitioner union and the Respondent Management is not a genuine contract and that it is only sham and nominal contract brought into existence after private contract system was abolished.

10. For years together, the workmen were engaged by the Respondent for the godown work paying wages to them through their union but contributing the employer's portion of provident fund and also verifying the medical fitness of all the workmen through their medical officer. This conduct on their part clearly makes out that for all purposes all these workmen are being treated as direct employees of the Respondent Management only. They merely formed as an union that too at the advice of the Management only to facilitate the Management and thus the contract said to have been formulated between the Petitioner union and the Respondent is certainly sham and nominal contract and for all purposes it is to be taken that the 72 members of the Petitioner union are only the employees of the Respondent Management and therefore, the relationship existing between them is that of employee and employer respectively.

This point is answered accordingly.

11. **Point No. II :**

The evidence on record discloses that all of a sudden Respondent closed Bobbili depot in the month of September, 2002 opening another depot within 10KM radius from the Bobbili depot i.e., at Antipeta. The services of 72 workmen who are now before this Tribunal through the Petitioner union were not engaged in the said new depot though they were continuously working for Bobbili depot since long time. They were not issued with any notice. They were not paid any compensation or notice pay. These are all admitted facts. While discussing Point No.I above, it was found that the relationship of employer and employee is in existence between the Management and the 72 members of the Petitioner union whose names are enumerated in the reference. In the given circumstances, sudden closure of the Bobbili depot by the Respondent Management thereby depriving the work to all these workmen amounts to retrenchment. But, admittedly none of the mandatory pre-requisites for retrenching the workmen have been complied with by the Respondent Management. This is certainly a grave lapse on the part of the Respondent Management. This conduct warrants immediate reinstatement of all the workmen into service with effect form the date of such illegal retrenchment with all attendant benefits, as per the well established principles of law governing this area.

12. As can be seen from the material on record, for same type of work done by the workmen of other depots direct payment system has been introduced by the Respondent and thereby regularising their services in Respondent's employment but, such benefit has been denied to the workmen herein. As already discussed above, for this discrimination no reason could be assigned for the Respondent. Certainly this lapse also is to be cured.

13. As can be gathered from the various documents produced before the court, the Management has contemplated reopening of the Bobbili depot and re-entrustment of the work to the workmen herein and for this purpose the Management called for some undertakings from the workmen. Ex. W7 is one such letter addressed by the Area Manager, Food Corporation of India, to the organising Secretary of the Petitioner union. In this letter Petitioner union was asked to give some undertakings as a pre-requisite for reopening of the godown at Bobbili. Ex.W8 is one another such letter. Ex.W9 is the reply given by WW2 to the Management expressing their readiness to give such undertakings. As can be gathered from Ex.W10 to W12, the Management agreed to reopen the godown immediately and start the work with all the old workers. The civil engineering department of the Respondent Management has made estimates for repairing the godown for the purpose of reopening. Considering all these circumstances it is just and reasonable to direct the Respondent corporation to take all further steps to reopen the said godown forth with and provide work to the 72 workmen herein. Even otherwise all these 72 workmen are to be directed to be provided with work by directing the Respondent to reinstate them into service. Their services also shall be regularised by introducing direct payment system to them on par with the workers of the various other godowns of the Respondent corporation in the state of Andhra Pradesh.

This point is answered accordingly.

14. **Point No. III :**

In view of the finding given in Point No.II all the 72 workmen who are members of the Petitioner union shall be reinstated into the services of the Respondent with effect from September, 2002. They all shall be extended with the benefit of Direct payment system. They are entitled for all attendant benefits including 50% of the back wages. They are entitled for such back wages for the reason that though discussions were held and decision was arrived at for reopening of the godown and for providing employment to all the se workmen by way of reinstatement, as can be gathered from ex.W7 to W11, the Respondent failed to do so, so far. The various representations of the Petitioner union clearly indicate that the workmen were pleading for the work all along but in vain. Thus, they are entitled for back wages of atleast 50%.

This point is answered accordingly.

Result :

The reference is answered as follows:

The contract between the Petitioner union and the Respondent Management is hereby declared as sham and nominal. The demand of the Petitioner union i.e., F.C.I. Workers union for reinstatement/regularization of the 72 workmen who are all terminated with effect from 27.10.2002 in the establishment of the Food Corporation of India i.e.,

the Respondent Management is legal and justified. The Respondent Management shall reinstate all these 72 workmen into service forthwith, with effect from the date of closure of the Bobbili Food Corporation of India godown i.e., 27.10.2002. They all shall be extended with the benefit of direct payment system. They are entitled for 50% of back wages and also all other attendant benefits.

Award passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri Kalim Ahmad	MW1: Smt. K. Leelavathamma
WW2: Sri Yandava Anand	
WW3: Sri Ganta Ramakrishna Naidu	

Documents marked for the Petitioner

Ex.W1: List of workers of FCI Labour Contract Co-operative Soceity Ltd., Bobbili

Ex.W2: Office copy of medical approval of 72 workers of F.C.I. L.C.C. Ltd.

Ex.W3: Society's Final Audit Report for 2000-2001

Ex.W4: EPF account slips of all Petitioners pertains to 2001-2002

Ex.W5: Photostat copy of bunch of identity cards of workers in F.C.I. FSD, Bobbili depot.

Ex.W6: Office copy of written statement filed by Management in O.S.No.185/2001 before Hon'ble Principle Junior Civil Judge, Bobbili

Ex.W7: Photostat copy of lr.No.E.25/1/2001-Stg.Vol.II dt. 20.1.2009

Ex.W8: Photostat copy of lr.No.E.25/1/2001-Stg.Vol.II dt. 6.8.2009

Ex.W9: Photostat copy of lr. to Management by the F.C.I. Labour Contract Co.operative Society Ltd. dt. 19.10.2009

Ex.W10: Photostat copy of lr. No.EC/WAT/EO/WAT/03/2010/FCI/VBI/05 dt.11.5.2005

Ex.W11: Photostat copy of minutes of meeting held with Union at Regional Office, Hyderabad dt. 2.6.2011

Ex.W12: Photostat copy of lr.No.S&C.15(3)/2001-02-Cont – vol.II dt. 4.4.2013

Documents marked for the Respondent

Ex.M1: Photostat copy of Decree in O.S. No.185/2001 dt. 3.8.2004

Ex.M2: Photostat copy of judgement in O.S. No.185/2001 dt. 3.8.2004

Ex.M3: Photostat copy of legal notice dt. 22.1.2001

Ex.M4: Photostat copy of reply notice

Ex.M5: Photostat copy of Proof affidavit filed in O.S. No. 185/01

Ex.M6: Photostat copy of letter to Regional Manager, FCI dt. 3.12.2002

Ex.M7: Photostat copy of order in WPMP No.26390/2002 dt. 25.10.2002

Ex.M8: Photostat copy of petition in WP No.21087/2002 dt. 23.10.2002

Ex.M9: Photostat copy of order in WPMP Nos. 3484 & 3485/03 and WPMP No.26390/2002 in WPNo.21087 dt. 28.4.2003

Ex.M10: Photostat copy of lr. issued to APSWC dt.16.11.2002

Ex.M11: Photostat copy of lr. issued to FCI Regional office dt. 22.7.2002

Ex.M12: Photostat copy of lr. issued to zonal office dt. 7.9.2002

Ex.M13: Photostat copy of lr. from FSD, Bobbili to DM, FCI dt.19.9.2002

Ex.M14: Photostat copy of lr. issued by SER dt. 18.9.2002

Ex.M15: Photostat copy of lr. issued by District Collector dt. 23.10.2004

Ex.M16: Photostat copy of representation to CM by the Petitioner dt. 16.10.2004

Ex.M17: Photostat copy of failure report by the ALC (C) dt.10.10.2003

Ex.M18: Photostat copy of agreement of contract dt. 27.2.2002

Ex.M19: Photostat copy of lr. from FCI Delhi to Chennai dt. 22.4.2003

Ex.M20: Photostat copy of lr. to ALC(C), Visakhapatnam dt. 18.9.2003

Ex.M21: Photostat copy of conciliation proceedings dt.18.8.2003

Ex.M22: Photostat copy of lr. from Regional Office dt. 15.9.2003

Ex.M23: Photostat copy of lr. to Regional Office dt. 8.8.2003

Ex.M24: Photostat copy of lr. to ALC© dt.8.8.2003

Ex.M25: Photostat copy of committee report dt. 12.4.2012

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2013.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. सी. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 66/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22012/59/2012–आईआर(सी–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2013.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 66/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the management of the M/s. Singareni Collieries Co. Ltd., and their workman, received by the Central Government on 07/07/2014.

[No. L-22012/59/2012-IR(C-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT: - SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 23rd day of June, 2014

INDUSTRIAL DISPUTE No. 66/2012

Between:

The General Secretary,
(Shri Revelli Ragam),
Singareni Coal Mines Labour Union(INTUC),
INTUC Bhawan, Godavarikhani,
Karimnagar Distt.-505209.

....Petitioner

AND

The Chief General Manager,
M/s. Singareni Collieries Company Ltd.,
Ramagundam-I Area, Godavarikhani,
Karimnagar District.-505209.

....Respondent

APPEARANCES :

For the Petitioner : None

For the Respondent : None

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/59/2012-IR(C-II) dated 25.9.2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of M/s. Singareni Collieries Company Ltd., and their workman. The reference is

SCHEDULE

"Whether the action of the Chief General Manager, M/s. Singareni Collieries Company Ltd., Ramagundam-I Area in not promoting Sri Akula Rajam, Pump Operator, w.e.f. 29.1.1981 in comparison with his Junior Sri Pacha Vara Prasada Rao, Pump Operator is justified or not? To what relief the applicant is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 66/2012 and notices were issued to the parties concerned.

2. Case stands posted for filing of Claim Statement and documents by Petitioner.

3. At this stage, Petitioner called absent. No representation. Claim statement not filed. Sri K. Vasudeva Reddy, Advocate, who filed vakalat for the Petitioner has given up the vakalat already. In spite of granting time for filing claim statement again and again and giving fair opportunity, Petitioner is not taking any interest in the proceedings and he has not made any claim. In the circumstances, taking that there is no claim to be made for the Petitioner, 'Nil' Award is passed.

Award is passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 जुलाई, 2014

का.आ. 2014.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 20/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/07/2014 को प्राप्त हुआ था।

[सं. एल–22012/301/2006–आईआर(सीएम–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 7th July, 2014

S.O. 2014.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2007) of the Central Government Industrial Tribunal-cum-Labour Court, NAGPUR now as shown in the Annexure in the Industrial Dispute between the management of the WCL, and their workman, received by the Central Government on 07/07/2014.

[No. L-22012/301/2006-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/20/2007, Date: 09.06.2014

Party No 1 : The Chief General Manager,
WCL, Pench Area, PO. Parasia,
Chhindwara. MP

Versus

Party No. 2: The Genral Secretary,
R.K.K.M.S. (INTUC),
PO. Chandametta,
Distt. Chhindwara. MP

AWARD

(Dated: 9th June, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Rampati Yadav, for adjudication, as per letter No.L-22012/301/2006-IR (CM-II) dated 16.04.2007, with the following Schedule:-

> "Whether the action of the management of WCL in dismissing Shri Rampati Yadav from services w.e.f 29.07.2003 is legal and justified? If not, to what relief the workman is entitled?

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "R.K.K.M.S. (INTUC)", ("the union" in short) filed the statement of claim on behalf of the workman, Shri Rampati Yadav, ("the workman" in short) and the management of WCL, ("party No.1" in short) filed the written statement.

The case of the workman as presented by the union in the statement of claim is that the workman was working as a Fitter helper in Shivpuri OCM of party No.1 and he was a permanent employee of party No.1 and the workman was the branch president of the union of Shivpuri OCM and there was a dispute about the rights and privileges of the employees, between the union and the management and there was heated exchange of words between the workman, he being the branch President of the union of Shivpuri OCM and the Manger of the Mine on 13.09.2001 and the management with a view to take rebuttal action against the workman, issued a charge sheet dated 13/16.05.2002 under clause 26.1 of the certified standing order and the workman replied to the charge sheet on 24.05.2002 and a departmental enquiry was constituted by order dated 12.06.2002 by the Superintendent of Mines/ Manager, Shivpuri OCM, appointing Shri H.K. Singh, Deputy Chief Personnel Manager/Incharge Area Pension Cell, G.M. Office, Parasia, as the Enquiry officer and the enquiry officer conducted the departmental enquiry and submitted his report to the Sub-Area Manager, Shivpuri OCM and a second show-cause notice was issued to the workman by the Sub-Area Manager on 09.07.2003, enclosing only pages 5 and 6 of the report of the enquiry officer and the workman replied to the second show-cause notice on 23.07.2006 and the Sub-Area Manager/Agent Shivpuri OCM by order dated 29.07.2003 passed the order of dismissal of the workman from services and the workman preferred an appeal before the Chief General Manager, WCL Pench Area through the Sub-Area Manager, but the appeal was not disposed of in spite of repeated request of the workman and so also of the union.

The further case of the workman as presented by the union is that there was a bipartite meeting on 16.01.2004 between its representative and the management of Pench Area on the charter of demand submitted by it dated 23.12.2003 and the matter of reinstatement of the workman was discussed as item No.24 and it was decided that on receipt of the appeal from it (union), necessary investigation/enquiry would be conducted in the matter.

It is further pleaded by the union on behalf of the workman that the charge sheet dated 18.05.2002 was vague and unspecific and although the workman was charged under clause 26.01 of the certified standing order on the allegation of committing theft with the property of the employer i.e. theft of coal on 18.03.2002, 25.03.202, 02.04.2002, 23.04.2002 and 29.04.2002 at 2.00 PM, 4.30 PM, 2.00 PM, 12.30 PM and 01.15 PM respectively, engaging about 20 to 25 persons in illegal coal mining of Haranbhata abandoned coal mine, the quantity and value of the alleged stolen coal from such illegal mining was not mentioned in the same and the copy of the complaint received by the Suptd. of Mine/Manager, Shivpuri OCM was neither enclosed with the charge sheet nor supplied to the workman and as such, the charge sheet submitted against the workman suffered from serious infirmities and was invalid and Shri H.K. Singh, the enquiry officer was a senior officer to that of the disciplinary authority, the Suptd. of Mines/ Manager and a junior officer cannot appoint a senior officer as the enquiry officer and therefore, the appointment of the Enquiry Officer was illegal and not maintainable in the

eyes of law and the enquiry officer did not explain the procedure of the departmental enquiry to the workman, while holding the initial sitting of the enquiry and therefore the workman was denied the principles of natural justice, by the enquiry officer and the enquiry officer even in his findings did not indicate the quantity and value of the alleged stolen coal by the workman and therefore, the findings of the enquiry officer were without application of mind and the enquiry officer instead of submitting the enquiry report to the Suptd. of Mines/Manager of Shivpuri OCM as per the direction of the order of appointment of the enquiry officer dated 12.06.2002, submitted the report along with the proceedings of the departmental enquiry to the Sub-Area Manager, Shivpuri Sub-Area, without mentioning any reason for submission of the same to the Sub-Area Manager and the Sub-Area Manager, Shivpuri OCM issued the order of dismissal of the workman from services on 29.07.2003 after obtaining the approval of the Chief General Manager of Pench Area and as per clause 2.1 of the certified standing order and the notifications, when the charge sheeting authority is the Manager of the Mine, then the dismissal approving authority is the Sub-Area Manager and the Chief General Manager is the appellate authority and as the General Manager, the notified appellate authority under the certified standing order accorded approval of the punishment of dismissal passed against the workman, the workman was deprived of the right of appeal and as such, the dismissal of the workman from services w.e.f. 29.07.2009 is illegal and as per clause 28.1 of the standing order, it is mandatory to consider the past service record of an employee before passing of the order of punishment and the past service record of the workman was clean and unblemished and the same was not considered by the party No.1, before imposing of the punishment of dismissal from services against the workman and the punishment is harsh and totally disproportionate.

The union has prayed to declare the order of punishment to be illegal and to set aside and quash the same and to direct the party No.1 to reinstate the workman with continuity, full back wages and all consequential benefits.

3. It is necessary to mention here that the party No.1 made appearance in the reference through its representative and received the copies of the statement of claim and documents on 02.12.2011 and the reference was adjourned to 09.02.2012 for filing of written statement and documents by party No.1. As the party No.1 on 09.02.2012 neither appeared nor filed any written statement, order was passed to proceed with the case without written statement and the preliminary issue, "whether the departmental enquiry held against the workman is valid, proper and in accordance with the principles of natural justice?" was framed and the petitioner was directed to lead evidence on the validity of the departmental enquiry, subsequent to 09.02.2012, the petitioner also remained absent and no evidence was adduced by him, so the case was fixed to 01.10.2012 for hearing of argument on the validity of the departmental enquiry. On 01.10.2012, the management representative appeared again and filed two applications, one to recall the order dated 09.02.2012 and to allow the management to file the written statement and after hearing both the parties, the applications were allowed, subject to payment of cost of Rs. 500/- (Rupees five hundred) to the petitioner and the case was posted to 11.10.2012 for payment of cost and for further orders. Thereafter, the case was adjourned to 11.10.2012, 11.12.2012, 05.02.2013 and 06.03.2013 for payment of cost and for further orders. As cost of Rs. 500 was not paid to the petitioner on 06.03.2013 and nobody appeared on behalf of the management, the case was fixed to 18.4.2013 for hearing of argument on the validity of the departmental enquiry. On 18.04.2013, management remained absent, whereas, the union representative filed the evidence of the workman on affidavit in regard to the validity of the departmental enquiry and an application to take the affidavit on record, with copies of the affidavit and application for the management, so the case was posted to 18.06.2013 for filing of say by the management to the application and hearing of the said application. On 18.06.2013, as management remained absent and as no say was filed and no step of any kind was taken, the application filed by the union representative to take the affidavit of the workman on record was allowed and the affidavit of the workman was taken on record and the case was fixed to 27.06.2013 for the cross-examination of the workman. On 27.06.2013 also, management remained absent, so, order of "No cross" of the workman was passed and evidence on the validity of the departmental enquiry from the side of the petitioner was closed and the case was posted to 02.08.2013 for adducing evidence from the side of the management. On 02.08.2013, management remained absent. No evidence was also produced by the management on 02.08.2013. So, evidence from the side of the management was closed and the case was posted to 17.09.2013 for hearing of argument on the validity of the departmental enquiry. On 17.09.2013, management remained absent, so, order was passed to proceed ex parte against the management and argument was heard from the side of the union and after closure of the argument, the case was fixed to 17.10.2013 for orders on the validity of the departmental enquiry.

4. The issue of the validity of the departmental enquiry was taken up for consideration as a preliminary issue, as punishment of dismissal from services was imposed against the workman after conduction of the departmental enquiry and by order dated 03.12.2013, the departmental enquiry conducted against the workman was held to be legal, proper and in accordance with the principles of natural justice.

5. It is necessary to mention here that in this case, the party no1 neither took any part nor made any argument.

6. In the written notes of argument, it was submitted by the union representative that in this case, party No.1 has not contested the case and party No.1 was allowed to file the written statement, subject to payment of a cost of Rs. 500/- to the workman, but as the cost of R.500/- was not paid, the order allowing to file written statement was withdrawn. It was further submitted that the charge levelled against the workman was vague and unspecific as the quantity and value of the coal alleged to be mined illegally by the workman were not mentioned in the same and the departmental enquiry, the Enquiry Officer did not try to ascertain the same and in the Enquiry report also, the Enquiry Officer did not mention such fact and as such, the findings of the Enquiry Officer are perverse and none of the Witnesses examined in the enquiry had stated about the presence of the workman, when the alleged coal mining was being carried out on different dates and in absence of such specific statement, the finding of the Enquiry Officer are perverse and can be held to be not based on the proceedings of the departmental enquiry and there was delay in submission of the charge sheet and the Enquiry Officer also did not analyze the evidence of the workman given in his defence and no reason was given as to why the evidence of the workman should be disbelieved and therefore, the finding of the Enquiry Officer that the charge against the workman was proved is perverse . It was further submitted that it is clear from the evidence on record that the workman was victimized due to his union activities and the workman was charge sheeted by the colliery Manager, Shivpuri Open Cast mine and the Enquiry Officer was also appointed by him, but the order of dismissal was signed and issued by the Sub Area manager, Shivpuri Area, which shows that to victimize the workman, the dismissal order was passed by the Sub Area Manager. It was further submitted that along with the second show cause notice, only the last page of the enquiry report submitted by the Enquiry Officer was supplied to the workman and had the workman been supplied with the full text of the report together with the findings of the Enquiry Officer, the workman would have been in a position to analyze the report and to submit a proper reply, but such an opportunity was denied to the workman and as 15 days time was given by the party No.1 to submit the reply, the workman was compelled to file his reply to the second show cause notice and there by the workman was denied the principles of natural justice and the action of the party no.1 is illegal and the long past service record of the workman was clean and unblemished and the workman was also acquitted in the criminal case instituted against him on the allegation of illegal mining of coal and the clean and unblemished past service record of the workman was not taken in to consideration at the time of imposition of the punishment, though it was required to be consider the same as per clause 28.1 of the Certified standing Order and as such the punishment of dismissal of the workman from services is shockingly disproportionate and unwarranted and as the date of the superannuation of the workman was 31.07.2013, his reinstatement in service is not possible and as such he is entitled for full back wages and all consequential monetary benefits.

In support of the submissions, the Union representative placed reliance on the decisions reported in 2006 LAB I C-4111(J.Ravikumar Vs. The Chief General Manager),AIR 1997SC-3387(Union of India Vs.G. Ganayutham), AIR 1963SC-1723(State of Andhra pradesh Vs. S. Shree Rama Rao), AIR 1978 SC-1277(Nanda Kishore Prasad Vs. The State of Bihar) and AIR 1999 SC-677(Kuldeep Singh Vs. Commissioner of Police)

7. It is clear from the principles enunciated by the Hon'ble Apex Court in the decisions cited by the union representative as mentioned above that:

"The disciplinary proceedings before a domestic Tribunal are of quasi-judicial character and therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the mater in a suspicious state as mere suspicion can not take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the Enquiry Officer would be perverse.

The findings recorded in a domestic inquiry can be characterized as perverse if it is shown that such a finding is not supported by any evidence on record or is not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence.

Where the findings of the misconduct are based on no legal evidence and the conclusion is one which no reasonable man could come, the findings can be rejected as perverse.

Where a quasi-judicial tribunal records findings based on no legal evidence and the findings are his mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non application of mind and stands vitiated.

Normally the High Court and This Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny."

In the light of the above position, now it is necessary to find out as to whether there is any ground to

hold the findings of the enquiry Officer to be perverse and to interfere with the punishment imposed against the workman.

8. So far the contentions raised by the Union representative regarding the vagueness and non-specification of the charge sheet and that the order of punishment was approved by the Appellate Authority, as a result of which, the workman lost the scope of appeal have already been considered at the time of deciding the preliminary issue of fairness or other wise of the departmental inquiry, so, there is no scope for consideration of the same again.

9. On perusal of the record, it is found that this is not a case of no evidence. It is also found that the departmental charge sheet was not issued on the basis of the criminal case instituted against the workman. As the enquiry was independent of the criminal proceedings, the acquittal of the workman in the criminal case is of no help to his case.The findings of the Enquiry Officer are based on the evidence on record of the departmental enquiry. The findings of the Enquiry Officer are also not as such, which cannot be arrived at by a reasonable man on such evidence. The Enquiry Officer has analyzed the evidence adduced by the parties in a rational manner and has also assigned reasons in support of the findings.

It is also well settled by the Hon'ble Apex Court in a number of decisions that:-

"A disciplinary proceeding is not a criminal trial. The Standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.

xxx xxx xxx xxx

> Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials. If the enquiry has been properly held, the question of adequacy or reliability of evidence cannot be canvassed before the High Court."

xxx xxx xxx xxx

The jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of Legislature or rules made under the proviso of Article 309 or the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

From the material on record, the discussions made above and judging the case with the touch stone of the principles as mentioned above and as enunciated by the Hon'ble Apex Court in the decisions cited by the Union representative, it cannot be said that the findings of the Enquiry Officer are perverse.

10. It was submitted on behalf of the workman that along with the second show cause notice, the copy of the entire report submitted by the Enquiry Officer was not given and only the last page of the said report was given. However, on perusal of the copy of the show cause notice filed by the workman, it is found that in the said notice itself, it has been clearly mentioned that the copy of the enquiry report was sent with the same. The workman did not raise any grievance either in the reply submitted by him to the show cause or separately regarding non receipt of the copy of the entire report of the enquiry officer. It appears from the record that such a plea has been taken in the statement of claim as an afterthought and therefore the same cannot be accepted.

11. The workman has taken a plea of victimization. The onus of establishing a plea of victimization is upon the person pleading it. Since a charge of victimization is a serious matter reflecting, to a degree, upon the subjective attitude of the employer evidenced by acts and conducts, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the Tribunal and a conclusion should be reached on a totality of the evidence produced. Once, in the opinion of the Tribunal a gross misconduct is established, as required, on legal evidence either in a fairly conducted domestic inquiry or before the tribunal on merits, the plea of victimization will not carry the case of the workman any further. A proved misconduct is the antithesis of victimization as understood in industrial relations. In this case, it is found that commission of serious misconduct has been proved against the workman in a fairly conducted departmental enquiry, so there is no question of any victimization of the workman.

12. So far the proportionality of punishment is concerned, it is found that commission of grave misconduct has been proved against the workman in a properly conducted departmental enquiry. The punishment of dismissal of the workman from service cannot be said to be shocking disproportionate to the serious misconduct proved against him. As such, there is

no scope to interfere with the punishment imposed against the workman. Hence, it is ordered:-

ORDER

The action of the management of WCL in dismissing Shri Rampati Yadav from services w.e.f 29.07.2003 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 8 जुलाई, 2014

का.आ. 2015.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दुर्ग राजनांदगांव ग्राम बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 27/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल–12012/10/2009–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 8th July, 2014

S.O. 2015.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2009) of the Central Government Industrial Tribunal/Labour Court, NAGPUR now as shown in the Annexure in the Industrial Dispute between the management of the Durg Rajnandgaon Gramin Bank, and their workman, which was received by the Central Government on 04/07/2014.

[No. L-12012/10/2009-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/27/2009, Date: 24.06.2014.

Party No.1 : The Chairman,
Durg Rajnandgaon Gramin Bank,
G. E. Road, Rajnandgaon,
Chattisgarh

The Manager,
Durg Rajnandgaon Gramin Bank,
Dhamdha Branch, Distt. Durg,
Chattisgarh.

("Durg Rajnandgaon Gramin Bank" was Amalgamated with "Chhattisgarh Gramin Bank" and "Surguja Kshetriya Gramin Bank' and called as "Chhattisgarh Rajya Gramin Bank" by the Central Government as per the official gazette notification dated 02.09.2013.)

Versus

Party No.2 : Shri Sunil Rajput S/o. Shri Durga Singh At & PO: 1st Battalion, SAP, Bhilai, Distt. Durgh, Chattisgarh.

AWARD

(Dated: 24th June, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Durg Rajnandgaon Gramin Bank, G.E. Road and their workman, Shri Sunil Kumar Rajput, for adjudication, as per letter No.L-12012/10/2009-IR (B-I) dated17.08.2009, with the following schedule:-

"Whether the action of the management of Durg Rajnandgaon Gramin Bank in terminating service of Shri Sunil Kumar Rajput, Ex-Daily Rated Safai Karamchari w.e.f. 18.12.2004 is legal and justified? If not, to what relief Shri Sunil Kumar Rajput is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sunil Kumar Rajput , ('the workman" in short), filed the statement of claim and the management of Durg Ragnandgaon Gramin Bank ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that the party No.1 is an industry within the meaning of section 2(a) of the Act and he was engaged as daily rated workman to work as messenger-cum-sweeper on 01.10.1999 by the Branch Manager, SAF Branch, Bhilai and he worked as such till 18.12.2004, when he was illegally terminated from service orally, with out one month's notice or one month's wages in lieu of notice and payment of retrenchment compensation, as required under the provisions of the Act and he had completed more than 240 days of work in each and every year and acquired the status of a permanent employee as per standing orders and he was entitled for regularization and at the time of his termination, he was being paid Rs.35/- per day as his wages and party No.1 did not display any seniority list and some employees junior to him were allowed to continue in service and as such, the termination of his service was in violation of the provisions of sections 25-F and 25-G of the Act and the documents regarding his engagement are with the party No.1 and his termination from services was illegal, he is entitled for reinstatement in service with continuity and full back wages.

3. The party No.1 in the written statement has pleaded inter alia that the workman was never appointed by its competent authority as such, there was no question of any termination and there was no relationship of employer and employee between it and the workman and as such, no industrial dispute existed and the reference has been made mechanically without application of mind and without consideration of the relevant material and the terms of reference are highly prejudicial to it and the order of reference is not only illegal and bad in law but also void ab-initio. It is further pleaded by the party No.1 that appointment in the Bank is governed by statutory Rules and Regulations and a person seeking employment in the Bank has to go through the entire procedure for getting employment and the engagement of the workman was not in accordance with the prescribed procedure for recruitment, so, he has no right to claim employment and the workman was engaged for less than two hours for sweeping the Bank premises and filling of drinking water in absence of the regular sub staff and he was being paid daily wages as and when he was engaged and neither he worked with it continuously from 01.10.1999 to 18.12.2004 nor he completed 240 days of work in any year and as there was no appointment, there was no termination as alleged and as such, there was no question of issuance of any notice or payment of one month's wages in lieu of the notice or retrenchment compensation and the engagement of the workman was intermittent as per requirement and there was no need to maintain any seniority list for the persons engaged on casual basis and no junior was retained in service and the provisions of section 25-F and 25-G are not attracted to the case of the workman and the workman is not entitled to any relief.

4. It is necessary to mention here that during the pendency of the reference, the "Durg Rajnandgaon Gramin Bank" was amalgamated with "Chhattisgarh Gramin Bank" and "Surguja Kshetriya Gramin Bank' and called as "Chhattisgarh Rajya Gramin Bank" by the Central Government as per the official gazette notification dated 02.09.2013.

5. In this case, the workman has claimed that he worked with the party No.1 continuously from 01.10.1999 to 18.12.2004 and his service was terminated on 18.12.2004 orally and that he had worked for more than 240 days in every and each year. The claim of the workman has been denied by the party No.1.

6. It is well settled by the Hon'ble Apex Court in catena of decisions that the onus lies upon the claimant to show that he had infact worked for 240 days in the year preceding his termination.

7. In this case, though the workman was given number of opportunities to lead evidence in support of his claim, he remained absent from 23.08.2013 and did not adduce any evidence. It is also necessary to mention here that on 23.05.2014, order was passed to proceed ex-parte against the workman as he remained absent and did not take part in the hearing of the reference.

8. The evidence of the witness for the party No.1 filed on affidavit remained unchallenged, as none appeared on behalf of the workman to cross-examine him.

10. It is well settled that whenever a workman raises a dispute challenging the validity of the termination of the service it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and the workman would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the workman has not adduced any evidence to prove his case and as such, he is not entitled to any relief. Hence, it is ordered:-

ORDER

The action of the management of Durg Rajnandgaon Gramin Bank(Chhattisgarh Rajya Gramin Bank) in terminating service of Shri Sunil Kumar Rajput, Ex daily rated safai karamchari w.e.f. 18.12.2004 is legal and justified? Shri Sunil Kumar Rajput is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 9 जुलाई, 2014

का.आ. 2016.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 106/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 16/06/2014 को प्राप्त हुआ था।

[सं. एल–41012/185/2001–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th July, 2014

S.O. 2016.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 106/2002) of the Central Government Industrial Tribunal/Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of Central Railway, and their workmen, received by the Central Government on 16/06/2014.

[No. L-41012/185/2001-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT:

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 106/2002

Ref. No. L-41012/185/2001-IR(B-I) dated: 30.05.2002

BETWEEN

Shri Rajesh Kumar, S/o Sh. Purshottam Bajpai
C/o Sh. K.G.N. Khare
F-3, Foreman Colony Roadways
Central Office (Rawatpur)
Kanpur (U.P.) – 2.

AND

The Divisional Commercial Manager (Catering)
Central Railway
Jhansi – 284 001.

AWARD

1. By order No. L-41012/185/2001-IR(B-I) dated: 30.05.2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Rajesh Kumar, S/o Sh. Purshottam Bajpai, C/o Sh. K.G.N. Khare, F-3, Foreman Colony Roadways, Central Office (Rawatpur), Kanpur (U.P.) and the Divisional Commercial Manager (Catering), Central Railway, Jhansi for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"KYA MANDAL VANIJYA PRABANDHAK (KHAN-PAAN) MADHYA RAILWAY, JHANSI DWARA KARMKAAR SHRI RAJESH KUMAR ATMAJ SHRI PURSHOTTAM BAJPAI KO DINANK 01.10.94 SE CHATNI KIYA JANA NAYAYOCHIT HAI? YADI NAHI, TO SAMBANDHIT KIS ANUTOSH KA HAQDAAR HAI?"

3. The case of the workman, Rajesh Kumar, in brief, is that he was engaged as daily rated casual labour w.e.f. 10.07.88 to discharge multi functional duties, including cooking, packing of food, cleaning of vassals and service of meals to passengers of trains including Shatabdi Express. The appointment was regular for performing regular and perennial work and for made for indefinite period till the attaining the age of superannuation. The workman was given Monthly Rated Casual Labour (MRCL) status after having completed 120 days continuously at base kitchen w.e.f. 29.10.89. It is submitted that the workman continued to work as such for approximately more than four years when all of sudden his services have terminated w.e.f. 30.09.1994 after serving a notice under Section 25 F of the I.D. Act, 1947. The management by the means of said notice retrenched the services of the workman after paying compensation of Rs. 6216/-. It has been alleged by the workman that while terminating/retrenching the services of the workman, the management of the railway did not observed rule of last come first go, as there are several persons who were juniors to the workman are still working as Khalasi at Jhansi Karkhana. It has also been alleged that the workman as engaged at catering unit, Jhansi (Base Kitchen) and the number of workman of Catering Unit, Jhansi (Base Kitchen) is more than 100, hence while terminating the services of the workmen, the condition contemplated under section 25 N of the I.D. Act has not been followed. Accordingly, the workman has prayed that his termination/retrenchment w.e.f. 30.09.1994 be set aside with consequential benefits, including full back wages.

4. The management of the central railway has field its written statement; whereby has admitted the engagement of the workman as a daily rated casual labour along with other w.e.f. 10.07.1988 due to exigencies of service on introduction of 'Shatabdi Express Train' for the purpose of preparing and delivering food article and providing associated services to the passengers of Shatabdi Express. It is also admitted that the workman was given temporary status on 29.10.89. It is submitted by the management that the workman was based at Catering Unit, Jhansi; but he was working exclusively for providing an associated services to the 'Shatabdi Express Train'. It is further submitted that at no point of time the strength of the catering unit, Jhansi, even after including the catering staff of 'Shatabdi Express, never had 100 or more, thus, the provisions of Section 25 N is not applicable in respect of the workman concerned. And accordingly, the termination of the workman under Section 25 F of the I.D. Act was just and legal. The management has denied this allegation of the workman that any of the juniors to the workman have been retained in service; and has submitted that all the similarly engaged, specifically for Shatabdi Express train were retrenched simultaneously under Section 25 F of the Act vide order dated 30.09.1994 after complying with the necessary formalities as required under Section 25 F of the Act. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman has filed its rejoined reiterating the averments already made in the statement of claim.

6. The parties have filed documentary evidence in support their claim. The workman has examined himself whereas the management has examined Shri P.K. Pandey, DCM, Central Railway, Jhansi. The parties availed opportunity to cross-examining the witnesses of each other apart from putting oral submissions.

7. I have given my thoughtful consideration to the rival contentions of the rival parities and perused entire evidence in light thereof.

8. The authorized representative of the workman has contended that the action of the management in terminating the services of the workman under provisions of Section 25 F of the I.D. Act, 1947 is malicious and camouflage. He has also contended that the action of the management amounts to non-compliance of Section 25 N. The representative of the workman has argued that on acquiring temporary status, the workman derived status of temporary servant and was governed by the Railway Servants (Disciplinary & Appeal) Rules, hence, his termination without adhering to the said rules and principle of natural justice is illegal.

The workman has filed list of employees at Catering Unit Jhansi for the year 1994 showing 142 employees at work in the said year to substantiate that Catering Unit Jhansi was an 'Industrial Undertaking' under section 25 K and he was entitled to protection and benefit under section 25 N. A copy of letter dated 28.12.92 is filed to show temporary status being granted to him and 20 other casual labours. Temporary status was granted to the workman w.e.f. 29.10.89. The above letter dated 28.12.92 further mentions approval of the Sr. Divisional Commercial Manager, Jhansi, in granting the temporary status. Copy of notice under Section 25 F of the Act, terminating his services is also filed. Medical Certificate is also filed to show his health in full conformity with the requirements of the services in catering unit. The workman has also filed a copy of letter of the Chief Catering Inspector dated 12/14.7.94 in respect of proposal discharging of 21 Monthly Rated Casual Labours including the workman.

9. The management's authorized representative has pleaded that Railway Board imposed complete ban on the engagement of fresh causal labour after the year 1980, without prior personal approval of the General Manager of the Zonal Railways. The workman together with others casual labours were engaged by the competent authority, without prior personal approval of the General Manager and so, it is contended that engagements were void-ab-initio, being against the rule and instructions of the Railway Board. It is also submitted that on process of streamlining man power under the Man Power Planning', the workman twenty other were found surplus being in excess of requirement and so, were retrenched with legal compensation etc. under the provisions of Section 25 F of the I.D. Act, 1947.

The management has filed a copy of chart indicating total strength (designation wise) of the catering unit, Jhansi including Shatabdi Express, a copy of the FA & CAO letter dated 2.7.93, a copy of CPO (HQ) letter dated 19.8.93, a copy of letter dated 8.7.94 of Sr. Divisional Accounts Officer, Central Railway, Jhansi. A copy of official notice dated 28.9.94 regarding disengagement of the services of the workman and others, a copy of letter dated 28.09.94 by the DRM regarding his disengagement and of others.

10. Admittedly, the workman was engaged as daily rated casual labour w.e.f. 10.07.1988 and was granted Monthly Rated Casual Labour (MRCL) status after having completed 120 days continuously at base kitchen w.e.f. 29.10.89 and his services have been terminated w.e.f. 30.09.1994 after complying with the provisions of Section 25 F of the Industrial Disputes Act, 1947 i.e. payment of retrenchment compensation of Rs. 6216/-. Aggrieved from termination of services the workman preferred an Original Application before the Central Administrative Tribunal, which was not entertained for the want of jurisdiction. Thereafter, the writ petition before Hon'ble High Court, Allahabd, which directed the workman to raise an industrial dispute before appropriate Government and consequently the present industrial dispute was raised.

11. Coming to the submission by the authorized representative of the workman that the Section 25 F was applied maliciously and this provision was used as camouflage. The factum of appointment, acquiring of temporary status and termination with notice under Section 25 F required to be analyzed. The workman and others were engaged in Catering Unit of Jhansi to strengthen the working of the said unit. No separate establishment or unit was formed to cater requirements of the Shatabdi Express. The letter of the Chief Catering Inspectors mentions that newly appointed casual worker/cleaners were retained in the unit and instead 14 of the senior were assigned work of Shatabdi Express. This fact remains uncontroverted. This further corroborate the plea of the workman that he and others were the employees of the catering unit Jhansi and not of any separate unit in the name of Shatabdi Express unit; as pleaded by the management. In fact, the base kitchen was common. The workman and others were engaged on selection due to increased load of work. Their engagement was made by the competent authority. The management has not disputed legality of the appointment, grant of temporary status to them except stating non-obtaining of approval of the General Manager and justified the retrenchment of the workman on plea of surplusage of staff.

12. Here it is necessary to refer the few lines of the notice of retrenchment dated 30.09.94; wherein it is specifically mentioned as under:

> "aapki sewaon ki aavakshyata nahi hone ke karan aapki sewaon ko etaddwara tatkaal prabhav se samapt ki jaati hai ……."

The natural meaning of the above expression is that there were surplus staff and the services of the workman and others were not needed. To substantiate the above fact, the management has annexed a chart indicating total strength (designation wise) at Catering Unit, Jhansi

including Shatabdi Express. This chart has been classified in two parts; first part showing present total strength and the second part showing total strength at the time of retrenchment i.e. on 30.09.94. A glance over this chart indicates present total strength 98, including 44 bearers and 18 cleaners. On the date of retrenchment i.e. 30.09.94, the strength at Catering Unit, Jhansi was 63 including 24 bearers and 10 cleaners. This chart falsifies the fact stated in the notice or retrenchment dated 30.09.94. The strength since increased by (98-63) = 35 at present. The number of bearers and cleaners also increased. The shrinkage of staff on man power planning is obviously an afterthought and false, particularly, when the present strength increased by more than 33% i.e. by 35, in comparison to the year of the retrenchment. Even if the explanation has been given as how the workman and other were in excess when the strength in 1994 was much less than the present strength. The plea that the workman and other retrenched workmen were surplus, apparently, is contrary to the facts. The management's witness Shri P.K. Pandey admitted staff strength to be 142 in his cross examination. There is no material to infer that the workman and other retrenched workmen were surplus, to warrant action under section 25 F. The basis of notice under Section 25 F is, thus, rendered non-est, making the use of this section malicious exercise of power. This fact is also falsified by the letter of the Chief Catering Inspector, Central Railway, Jhansi dated 20.07.94, in reference to the letter No. C/192/CL/117 DC dated 12/14.07.94. This letter very specifically states that 58 posts of MRCL were sanctioned, as against only 42 MRCL were working and there existed shortage of 16 MRCL. This fact has not been controverted in the written statement or in the oral statement of the Divisional commercial Manager (C). Thus, it is, fully proved that dispensation of the services of the workman, on ground of non availability of work was totally unjustified and Section 25 F was used as device to get rid of the workman and others. The management deliberately concealed letter No. C/192/CL/117 DC dated 12/14.07.94, in reply to which the Chief Catering Inspector had clarified the position and required services of the workman and 20 others, whose retrenchment were under consideration.

13. The management has taken plea that the engagement of the workman and others was without prior personal approval of the General Manager and so, the very appointments were illegal. Any copy of circular banning the recruitment has not been filed. However, assuming the ban on fresh engagement after 1980 the engagements, if not fraudulent, may be said irregular and not illegal. This circular was administrative in nature and issued as guidelines to rationalize and regulate fresh engagements. Fresh engagements were not banned but regulated by a clog of approval of the General Manager. This condition, in fresh engagement did not render the appointment of the workman, illegal, against the sanctioned strength. The so called guidelines permitted engagement of the casual labour subject to the approval of the General Manager. This administrative measure was to prevent abuse of engaging casual labours. This must be borne in mind that casual engagement connotes engagement without post. In the present case, the engagements were against the posts. In any event, at the time of retrenchment, the status of the workman did not remain casual on acquiring temporary status as there existed sanctioned post as stated by the Chief Catering Inspector in his letter. Such administrative instructions cannot take away legal status of the workman engaged by the competent authority. The workman and others were not apprised that they were being engaged against the instructions of the Railway Board. They were selected by the competent authority by adopting the due process. The taking of approval was the duty of the authorities and not of the workman. The workman cannot be punished if the approval was not sought. There is no material to show that approval was sought and rejected. There is also, no material that the concerned officers involved in engagement of the workman and others were penalized by the Railway management for having acted against the instructions of the Railway Board. The fact, is otherwise. Management's documents show that FA&CO Office, Bombay, by letter No. AC/958/E&G/CORES/II dated 02.07.93 questioned engagement of 21 MRCL at Jhansi catering unit. Para 1 of this letter mentions letter No. E(NG)II-CL/43 dated 07.06.84 circulated under office letter No. HPV/22513/R dated 09.08.84, 'no fresh, shall be engaged as casual labour, without prior approval of the General Manager, some guidelines have been issued to all DRM by your office vide letter quoted above. These irregular (not illegal) appointments of 21 MRCLs were also questioned by the Chief Personnel Officer of the Central Railway by letter dated 19.08.93. Again Sr. DAO JHS vide letter dated 08.07.94 mentioned about irregular appointment. In concluding para of this letter 'discharge notice' to such appointees (MRCL) was desired. Management has filed office note dated 28.09.94. Mr. R.N. Srivastava, DCM (Catering) Jhansi submitted his note to ADRM/Sr. DPO/Sr. DCM for dispensing services of 21 MRCL by issuing notice. On this note endorsements of the above authorities are given. It was decided to discharge them on the plea of there being no work and this note was approved. It appears that in view of this decision on office note, the series of the workman and 20 others were dispensed with taking assistance of Section 25 F though the fact considered were different i.e. irregular appointment without approval. It has already been observed that the Chief Catering Inspector justified their retention on plea of availability of work. The chart of strength also justify this inference. It appears that the senior authorities, to save their skin adopted this device of dispensing services of the workman and 20 others. The workman and similarly placed were made to pay for sin of authorities after wasting six years of their prime age. As observed earlier, the

workman had not obtained engagement by fraud. He was selected and engaged and further provided temporary status. All employees with temporary status are governed by the Railway Servants (Discipline & Appeal) Rules. He was no longer casual worker but worker with temporary status, to be treated as temporary Railway Servant. If the Railway treated their services irregular he should have been given opportunity to explain his position. The workman was not given any opportunity to justify his engagement after acquiring temporary status. This approach was against the rule of natural justice. Even on assuming his appointment no regular, his termination should have been preceded by a show cause notice.

14. Now it has to be considered as to whether Section 25 F applied at all in case of the workman? The workman claims that his retrenchment could be made under Section 25 N of the I.D. Act, 1947. The management in reply has contended that the management is not an 'Industrial Establishment' within the meaning of 25 L (a)(i) of the I.D. Act, 1947, as it is not Factory under sub-section (m) of Section 2 of the Factories Act. Section 2(m) Factories Act, reads as follow:

(m) "factory" means any premises including the precincts thereof

(i) Whereon then or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) Whereon twenty or more workers are working or were working on any day of preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

But does not include a mine subject to the operation of (the Mines Act, 1952 (35 of 1952) or (a mobile unit belonging to the armed forces of the Union, railway running shed or hostel, restaurant or eating palace).

(Explanation I – For computing the number of workers for the purposes of this clause all the workers in (different groups and relays) in a day shall be taken into account)

(Explanation II – For the purposes of this clause, the mere than an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on n such premises or part thereof)

15. Taking advantage of the exception clause, it is submitted by the management that catering unit, in railway is not an 'industrial establishment'. The exception clause mention 'railway running shed or a hotel, a restaurant or eating place. The catering department comprising with several working units in Central Railway is to be taken as a single establishment, for computing number of employees to be more than 100. In any event, the workman has filed list of staff at catering unit Jhansi for the year 1994 which shows the number of staff being 142. This fact is not contorverted by evidence. The management witness, Shri P.K. Pandey who appeared for cross examination, admitted that number of working staff is 142. This admission settled the controversy of number game, to bring the provision of chapter V-B in operation.

16. The factor is as to whether the activities in catering establishment in Central Railway, particularly, the working catering unit, Jhansi, may be taken as 'manufacturing and so may be said a factory under section 2 (m) of the Factory Act, 1948. The definition of 'factory', reproduced above, excludes railway running shed or a hotel, a restaurant or eating place. Undeniably, the catering unit Jhansi is not a running shed or hotel. It is also not a restaurant in true sense. It prepares meal for the passengers in train or otherwise and serve in trains, platform and occasionally, in room marked for at on the platform. There is a common base kitchen to cater needs of the passengers, not only of Shatabdi Express but of other trains also. Evidently, catering unit Jhansi is not covered by the exclusion clause of 'factory' as defined under section 2(m) of the Factory Act, 1948.

17. Preparation of food items in base kitchen and other related activities as packaging supply in train or platform etc. are run on commercial basis. The character of such activities in base kitchen is nothing but of manufacturing. These activities in manufacturing food etc. in base kitchen are systematic and not casual.

18. Hence, in view of the discussions made hereinabove, it can be safely said that the provisions of Section 25 N of the Industrial Disputes Act, 1947 was not applied since the permission required by clause (b) of Section 25 N of the Act has not been complied with as the prior permission of the appropriate Government has not been taken. There is no document on record to show that application was moved by the employer, seeking permission of the appropriate Government; and permission was granted by the said Government. Thus, the workman was entitled to be dealt with the provisions under section 25 N and not under section 25 F of the Industrial Disputes Act, 1947. Hence, the retrenchment order under Section 25 F was illegal.

19. Thus, from the facts and circumstances of the case, I am of considered opinion that the action of the management of the Divisional Commercial Manager (Catering), Central Railway, Jhansi in terminating the services of the workman under section 25 F of the Industrial Disputes Act, 1947 was neither legal nor justified; and accordingly, I come to the conclusion that the workman is entitled for reinstatement will full back

wages and other consequential benefits, assuming that there existed no termination at any point of time within six weeks from the date of publication of this award in the gazette, failing he shall also be entitled for simple interest @ 6% per annum on arrears. The reference is answered accordingly.

20. Award as above.

LUCKNOW.

05th June, 2014.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 9 जुलाई, 2014

का.आ. 2017.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीचअनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 105/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16/06/2014 को प्राप्त हुआ था।

[सं. एल–41012/169/2001–आईआर (बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th July, 2014

S.O. 2017.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 105/2002) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Central Railway, and their workmen, which was received by the Central Government on 16/06/2014.

[No. L-41012/169/2001-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 105/2002

Ref. No. L-41012/169/2001-IR(B-I) dated: 31.05.2002

BETWEEN

Shri Shamimudin, S/o Late Sh. Najirudin
692/1, Kund Pada, Nand Purva
Distt. – Jhansi (U.P.) – 284001.

AND

The Divisional Commercial Manager (Catering)
Central Railway
Jhansi – 284 001.

AWARD

1. By order No. L-41012/169/2001-IR(B-I) dated: 31.05.2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Shamimudin, S/o Late Sh. Najirudin, 692/1, Kund Pada, Nand Purva, Distt. – Jhansi (U.P.) and the Divisional Commercial Manager (Catering), Central Railway, Jhansi for adjudication to this CGIT-cum-Labour Court, Lucknow.

3. The reference under adjudication is:

"KYA MANDAL VANIJYA PRABANDHAK (KHAN-PAAN) MADHYA RAILWAY, JHANSI DWARA KARMKAAR SHRI SHAMIMUDDIN ATMAJ SHRI SW. NAJIRUDDIN KO DINANK 30.9.1994 SE SEWA SE NISHKAASIT KARNA NAYAYOCHIT HAI? YADI NAHI TO SAMBANDHIT KIS ANUTOSH KA HAQDAAR HAI?"

3. The case of the workman, Shamim-ud-din, in brief, is that he was engaged as daily rated casual labour w.e.f. 10.07.88 to discharge multi functional duties, including cooking, packing of food, cleaning of vassals and service of meals to passengers of trains including Shatabdi Express. The appointment was regular for performing regular and perennial work and for made for indefinite period till the attaining the age of superannuation. The workman was given Monthly Rated Casual Labour (MRCL) status after having completed 120 days continuously at base kitchen w.e.f. 28.12.1992. It is submitted that the workman continued to work as such for approximately more than four years when all of sudden his services have terminated w.e.f. 30.09.1994 after serving a notice under Section 25 F of the I.D. Act, 1947. The management by the means of said notice retrenched the services of the workman after paying compensation of Rs. 6216/-. It has been alleged by the workman that while terminating/retrenching the services of the workman, the management of the railway did not observed rule of last come first go, as there are several persons who were similarly situated and appointed with the workman viz. Phool Singh, Jamil Siddiqui, Ambika Prasad are still working as Khalasi at Jhansi Karkhana. It has also been alleged that the workman as engaged at catering unit, Jhansi (Base Kitchen) and the number of workman of Catering Unit, Jhansi (Base Kitchen) is more than 100, hence while terminating the services of the workmen, the condition contemplated under section 25 N of the I.D. Act has not been followed. Accordingly, the workman has prayed that his termination/retrenchment w.e.f. 30.09.1994 be set aside with consequential benefits, including full back wages.

4. The management of the central railway has field its written statement; whereby has admitted the engagement of the workman as a daily rated casual labour along with other w.e.f. 10.07.1988 due to exigencies of service on introduction of 'Shatabdi Express Train' for the purpose of preparing and delivering food article and providing associated services to the passengers of Shatabdi Express. It is also admitted that the workman was given temporary status on 28.12.1992. It is submitted by the management that the workman was based at Catering Unit, Jhansi; but he was working exclusively for providing an associated services to the 'Shatabdi Express Train'. It is further submitted that at no point of time the strength of the catering unit, Jhansi, even after including the catering staff of 'Shatabdi Express, never had 100 or more, thus, the provisions of Section 25 N is not applicable in respect of the workman concerned. And accordingly, the termination of the workman under Section 25 F of the I.D. Act was just and legal. The management has denied this allegation of the workman that any of the juniors to the workman have been retained in service; and has submitted that all the similarly engaged, specifically for Shatabdi Express train were retrenched simultaneously under Section 25 F of the Act vide order dated 30.09.1994 after complying with the necessary formalities as required under Section 25 F of the Act. Accordingly, the management has prayed that the claim of the workman be rejected being devoid of any merit.

5. The workman has filed its rejoined reiterating the averments already made in the statement of claim.

6. The parties have filed documentary evidence in support their claim. The workman has examined himself whereas the management has examined Shri P.K. Pandey, DCM, Central Railway, Jhansi. The parties availed opportunity to cross-examining the witnesses of each other apart from putting oral submissions.

7. I have given my thoughtful consideration to the rival contentions of the rival parities and perused entire evidence in light thereof.

8. The authorized representative of the workman has contended that the action of the management in terminating the services of the workman under provisions of Section 25 F of the I.D. Act, 1947 is malicious and camouflage. He has also contended that the action of the management amounts to non-compliance of Section 25 N. The representative of the workman has argued that on acquiring temporary status, the workman derived status of temporary servant and was governed by the Railway Servants (Disciplinary & Appeal) Rules, hence, his termination without adhering to the said rules and principle of natural justice is illegal.

The workman has filed list of employees at Catering Unit Jhansi for the year 1994 showing 142 employees at work in the said year to substantiate that Catering Unit Jhansi was an 'Industrial Undertaking' under section 25 K and he was entitled to protection and benefit under section 25 N. A copy of letter dated 28.12.1992 is filed to show temporary status being granted to him and 20 other casual labours. Temporary status was granted to the workman w.e.f. 28.12.1992. The above letter dated 28.12.1992 further mentions approval of the Sr. Divisional Commercial Manager, Jhansi, in granting the temporary status. Copy of notice under Section 25 F of the Act, terminating his services is also filed. Medical certificate is also filed to show his health in full conformity with the requirements of the services in catering unit. The workman has also filed a copy of letter of the Chief Catering Inspector dated 12/14.7.94 in respect of proposal discharging of 21 Monthly Rated Casual Labours including the workman.

9. The management's authorized representative has pleaded that Railway Board imposed complete ban on the engagement of fresh causal labour after the year 1980, without prior personal approval of the General Manager of the Zonal Railways. The workman together with others casual labours were engaged by the competent authority, without prior personal approval of the General Manager and so, it is contended that engagements were void-ab-initio, being against the rule and instructions of the Railway Board. It is also submitted that on process of streamlining man power under the Man Power Planning', the workman twenty other were found surplus being in excess of requirement and so, were retrenched with legal compensation etc. under the provisions of Section 25 F of the I.D. Act, 1947.

The management has filed a copy of chart indicating total strength (designation wise) of the catering unit, Jhansi including Shatabdi Express, a copy of the FA & CAO letter dated 2.7.93, a copy of CPO (HQ) letter dated 19.8.93, a copy of letter dated 8.7.94 of Sr. Divisional Accounts Officer, Central Railway, Jhansi. A copy of official notice dated 28.9.94 regarding disengagement of the services of the workman and others, a copy of letter dated 28.09.94 by the DRM regarding his disengagement and of others.

10. Admittedly, the workman was engaged as daily rated casual labour w.e.f. 10.07.1988 and was granted Monthly Rated Casual Labour (MRCL) status after having completed 120 days continuously at base kitchen w.e.f. 28.12.92 and his services have been terminated w.e.f. 30.09.1994 after complying with the provisions of Section 25 F of the Industrial Disputes Act, 1947 i.e. payment of retrenchment compensation of Rs. 6216/-. Aggrieved from termination of services the workman preferred an Original Application before the Central Administrative Tribunal, which was not entertained for the want of jurisdiction. Thereafter, the writ petition before Hon'ble High Court, Allahabd, which directed the workman to raise an industrial dispute before appropriate Government and consequently the present industrial dispute was raised.

11. Coming to the submission by the authorized representative of the workman that the Section 25 F was applied maliciously and this provision was used as camouflage. The factum of appointment, acquiring of temporary status and termination with notice under Section 25 F required to be analyzed. The workman and others were engaged in Catering Unit of Jhansi to strengthen the working of the said unit. No separate establishment or unit was formed to cater requirements of the Shatabdi Express. The letter of the Chief Catering Inspectors mentions that newly appointed casual worker/cleaners were retained in the unit and instead 14 of the senior were assigned work of Shatabdi Express. This fact remains uncontroverted. This further corroborate the plea of the workman that he and others were the employees of the catering unit Jhansi and not of any separate unit in the name of Shatabdi Express unit; as pleaded by the management. In fact, the base kitchen was common. The workman and others were engaged on selection due to increased load of work. Their engagement was made by the competent authority. The management has not disputed legality of the appointment, grant of temporary status to them except stating non-obtaining of approval of the General Manager and justified the retrenchment of the workman on plea of surplusage of staff.

12. Here it is necessary to refer the few lines of the notice of retrenchment dated 30.09.94; wherein it is specifically mentioned as under:

"aapki sewaon ki aavakshyata nahi hone ke karan aapki sewaon ko etaddwara tatkaal prabhav se samapt ki jaati hai ....."

The natural meaning of the above expression is that there were surplus staff and the services of the workman and others were not needed. To substantiate the above fact, the management has annexed a chart indicating total strength (designation wise) at Catering Unit, Jhansi including Shatabdi Express. This chart has been classified in two parts; first part showing present total strength and the second part showing total strength at the time of retrenchment i.e. on 30.09.94. A glance over this chart indicates present total strength 98, including 44 bearers and 18 cleaners. On the date of retrenchment i.e. 30.09.94, the strength at Catering Unit, Jhansi was 63 including 24 bearers and 10 cleaners. This chart falsifies the fact stated in the notice or retrenchment dated 30.09.94. The strength since increased by (98-63) = 35 at present. The number of bearers and cleaners also increased. The shrinkage of staff on man power planning is obviously an afterthought and false, particularly, when the present strength increased by more than 33% i.e. by 35, in comparison to the year of the retrenchment. Even if the explanation has been given as how the workman and other were in excess when the strength in 1994 was much less than the present strength. The plea that the workman and other retrenched workmen were surplus, apparently, is contrary to the facts. The management's witness Shri P.K. Pandey admitted staff strength to be 142 in his cross examination. There is no material to infer that the workman and other retrenched workmen were surplus, to warrant action under section 25 F. The basis of notice under Section 25 F is, thus, rendered non-est, making the use of this section malicious exercise of power. This fact is also falsified by the letter of the Chief Catering Inspector, Central Railway, Jhansi dated 20.07.94, in reference to the letter No. C/192/CL/117 DC dated 12/14.07.94. This letter very specifically states that 58 posts of MRCL were sanctioned, as against only 42 MRCL were working and there existed shortage of 16 MRCL. This fact has not been controverted in the written statement or in the oral statement of the Divisional commercial Manger (C). Thus, it is, fully proved that dispensation of the services of the workman, on ground of non availability of work was totally unjustified and section 25 F was used as device to get rid of the workman and others. The management deliberately concealed letter No. C/192/CL/117 DC dated 12/14.07.94, in reply to which the Chief Catering Inspector had clarified the position and required services of the workman and 20 others, whose retrenchment were under consideration.

13. The management has taken plea that the engagement of the workman and others was without prior personal approval of the General Manager and so, the very appointments were illegal. Any copy of circular banning the recruitment has not been filed. However, assuming the ban on fresh engagement after 1980 the engagements, if not fraudulent, may be said irregular and not illegal. This circular was administrative in nature and issued as guidelines to rationalize and regulate fresh engagements. Fresh engagements were not banned but regulated by a clog of approval of the General Manager. This condition, in fresh engagement did not render the appointment of the workman, illegal, against the sanctioned strength. The so called guidelines permitted engagement of the casual labour subject to the approval of the General Manager. This administrative measure was to prevent abuse of engaging casual labours. This must be borne in mind that casual engagement connotes engagement without post. In the present case, the engagements were against the posts. In any event, at the time of retrenchment, the status of the workman did not remain casual on acquiring temporary status as there existed sanctioned post as stated by the Chief Catering Inspector in his letter. Such administrative instructions cannot take away legal status of the workman engaged by the competent authority. The workman and others were not apprised that they were being engaged against the instructions of the Railway Board. They were selected by the competent authority by adopting the due process. The taking of approval was the duty of the authorities and not of the workman. The workman cannot be punished if the

approval was not sought. There is no material to show that approval was sought and rejected. There is also, no material that the concerned officers involved in engagement of the workman and others were penalized by the Railway management for having acted against the instructions of the Railway Board. The fact, is otherwise. Management's documents show that FA&CO Office, Bombay, by letter No. AC/958/E&G/CORES/II dated 02.07.93 questioned engagement of 21 MRCL at Jhansi catering unit. Para 1 of this letter mentions letter No. E(NG)II-CL/43 dated 07.06.84 circulated under office letter No. HPV/22513/R dated 09.08.84, 'no fresh, shall be engaged as casual labour, without prior approval of the General Manager, some guidelines have been issued to all DRM by your office vide letter quoted above. These irregular (not illegal) appointments of 21 MRCLs were also questioned by the Chief Personnel Officer of the Central Railway by letter dated 19.08.93. Again Sr. DAO JHS vide letter dated 08.07.94 mentioned about irregular appointment. In concluding para of this letter 'discharge notice' to such appointees (MRCL) was desired. Management has filed office note dated 28.09.94. Mr. R.N. Srivastava, DCM (Catering) Jhansi submitted his note to ADRM/Sr. DPO/Sr. DCM for dispensing services of 21 MRCL by issuing notice. On this note endorsements of the above authorities are given. It was decided to discharge them on the plea of there being no work and this note was approved. It appears that in view of this decision on office note, the series of the workman and 20 others were dispensed with taking assistance of section 25 F though the fact considered were different i.e. irregular appointment without approval. It has already been observed that the Chief Catering Inspector justified their retention on plea of availability of work. The chart of strength also justify this inference. It appears that the senior authorities, to save their skin adopted this device of dispensing services of the workman and 20 others. The workman and similarly placed were made to pay for sin of authorities after wasting six years of their prime age. As observed earlier, the workman had not obtained engagement by fraud. He was selected and engaged and further provided temporary status. All employees with temporary status are governed by the Railway Servants (Discipline & Appeal) Rules. He was no longer casual worker but worker with temporary status, to be treated as temporary Railway Servant. If the Railway treated their services irregular he should have been given opportunity to explain his position. The workman was not given any opportunity to justify his engagement after acquiring temporary status. This approach was against the rule of natural justice. Even on assuming his appointment no regular, his termination should have been preceded by a show cause notice.

14. Now it has to be considered as to whether Section 25 F applied at all in case of the workman? The workman claims that his retrenchment could be made under Section 25 N of the I.D. Act, 1947. The management in reply has contended that the management is not an 'Industrial Establishment' within the meaning of 25 L (a)(i) of the I.D. Act, 1947, as it is not Factory under sub-section (m) of section 2 of the Factories Act. Section 2(m) Factories Act, reads as follow:

(m) "factory" means any premises including the precincts thereof

(i) Whereon then or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) Whereon twenty or more workers are working or were working on any day of preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

But does not include a mine subject to the operation of (the Mines Act, 1952 (35 of 1952) or (a mobile unit belonging to the armed forces of the Union, railway running shed or hostel, restaurant or eating palace).

(Explanation I – For computing the number of workers for the purposes of this clause all the workers in (different groups and relays) in a day shall be taken into account)

(Explanation II – For the purposes of this clause, the mere than an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on n such premises or part thereof)

15. Taking advantage of the exception clause, it is submitted by the management that catering unit, in railway is not an 'industrial establishment'. The exception clause mention 'railway running shed or a hotel, a restaurant or eating place. The catering department comprising with several working units in Central Railway is to be taken as a single establishment, for computing number of employees to be more than 100. In any event, the workman has filed list of staff at catering unit Jhansi for the year 1994 which shows the number of staff being 142. This fact is not contorverted by evidence. The management witness, Shri P.K. Pandey who appeared for cross examination, admitted that number of working staff is 142. This admission settled the controversy of number game, to bring the provision of chapter V-B in operation.

16. The factor is as to whether the activities in catering establishment in Central Railway, particularly, the working catering unit, Jhansi, may be taken as 'manufacturing and so may be said a factory under section 2 (m) of the Factory Act, 1948. The definition of 'factory', reproduced above, excludes railway running shed or a hotel, a restaurant or eating place. Undeniably, the catering unit Jhansi is not a running shed or hotel. It is also not a restaurant in true sense. It prepares meal for the passengers in train or otherwise and serve in trains, platform and occasionally, in room marked for at on the platform. There is a common base kitchen to cater needs of the passengers, not only of Shatabdi Express but of other trains also. Evidently, catering unit Jhansi is not covered by the exclusion clause of 'factory' as defined under section 2(m) of the Factory Act, 1948.

17. Preparation of food items in base kitchen and other related activities as packaging supply in train or platform etc. are run on commercial basis. The character of such activities in base kitchen is nothing but of manufacturing. These activities in manufacturing food etc. in base kitchen are systematic and not casual.

18. Hence, in view of the discussions made hereinabove, it can be safely said that the provisions of section 25 N of the Industrial Disputes Act, 1947 was not applied since the permission required by clause (b) of Section 25 N of the Act has not been complied with as the prior permission of the appropriate Government has not been taken. There is no document on record to show that application was moved by the employer, seeking permission of the appropriate Government; and permission was granted by the said Government. Thus, the workman was entitled to be dealt with the provisions under section 25 N and not under section 25 F of the Industrial Disputes Act, 1947. Hence, the retrenchment order under Section 25 F was illegal.

19. Thus, from the facts and circumstances of the case, I am of considered opinion that the action of the management of the Divisional Commercial Manager (Catering), Central Railway, Jhansi in terminating the services of the workman under section 25 F of the Industrial Disputes Act, 1947 was neither legal nor justified; and accordingly, I come to the conclusion that the workman is entitled for reinstatement will full back wages and other consequential benefits, assuming that there existed no termination at any point of time within six weeks from the date of publication of this award in the gazette, failing he shall also be entitled for simple interest @ 6% per annum on arrears. The reference is answered accordingly.

20. Award as above.

LUCKNOW.
04th June, 2014.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 9 जुलाई, 2014

का.आ. 2018.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 124/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/07/2014 को प्राप्त हुआ था।

[सं. एल–41012/42/2001–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th July, 2014

S.O. 2018.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 124/2001) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Northern Railway, and their workman, which was received by the Central Government on 02/07/2014.

[No. L-41012/42/2001-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM- LABOUR COURT, LUCKNOW

PRESENT :

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 124/2001

Ref. No. L-41012/42/2001-IR(B-I) dated: 03.08.2001

BETWEEN

Shri Dina Nath Tiwari
Divisional Organization Secretary
Uttar Railway Karmchari Union
Qr. No. 119/74-61, Naseemabad
Kanpur (U.P.) – 208 001
(Espousing cause of Shri Sohan Lal)

AND

The Divisional Railway Manager
Northern Railway Allahabad (U.P.) – 211 006.

AWARD

1. By order No. L-41012/42/2001-IR(B-I) dated: 03.08.2001 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section

10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Dina Nath Tiwari, Divisional Organization Secretary, Uttar Railway Karmchari Union, Qr. No. 119/74-61, Naseemabad, Kanpur (U.P.) and the Divisional Railway Manager, Northern Railway Allahabad (U.P.) for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF DIVISIONAL RAILWAY MANAGEMENT, NORTHERN RAILWAY, ALLAHABAD IN NOT GIVING THE PAY SCALE OF RS. 4500-7000 TO SHRI SOHAN LAL W.E.F. 7-2-1995 (R.P.S.) IS JUSTIFIED? IF NOT, WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. It is admitted case of the parties that the workman Shri Sohan Lal while appointed as Switch Man in the pay scale of Rs. 1200-2040, was declared unfit for the post vide medical certificate dated 07.02.1995 and thereafter he was adjusted against the post of clerk in pay scale of Rs. 950-1500 vide letter dated 10.10.1995.

4. The workman's union has alleged that while adjusting the workman, the railway did not protected his pay scale and adjusted him against the post of clerk with pay scale of Rs. 950-1500; whereas he was ought to have adjusted against the post o Senior Clerk with pay scale of Rs. 1200-2040. It was further alleged by the workman's union that had the railway given him the pay scale of Rs. 1200-2040 then on implementation of Fifth Pay Commission he might have got pay scale of Rs. 4500-7000. The workman's union has submitted that the alleged action of the management is voilative of the Railway Rules and law laid down by the Courts; and accordingly, has prayed that the management be directed to adjust him against pay scale of Rs. 1200-2040 w.e.f. the date of declaration of his medically unfit i.e. 07.02.1995 with consequential benefits, including seniority.

5. The management in its written statement has denied the allegation of the workman's union with submission that the when once the alternative employment with requisite salary as per law, was accepted by the workman, then agitating the matter settled long back, is not proper and justified; and accordingly, has submitted that the claim of the workman's union be rejected with any relief to the workman concerned.

6. The workman's union has filed its rejoined; wherein it has stated nothing new apart from repeating the averments already made in the statement of claim.

7. The parties have adduced documentary evidence in support of their respective stands. The workman's union has examined the workman, Sohan Lal; whereas the management has examined Shri Amar Singh, DPO to substantiate their pleadings. The parties availed opportunity to cross-examine the each other's witnesses apart from putting oral as well as written arguments.

7. Heard, representatives of the parties and perused entire evidence on records.

8. The learned representative on behalf of the workman has contended that as per Rules, the workman on being declared unfit was required to adjusted in the same pay scale; but the management did not observe this basic principle, which resulted the monetary loss to the workman.

9. In rebuttal, the authorized representative of the management has argued that as per approval of the screening committee, the workman was provided alternative employment and in accordance with rules and taking every aspect of mater the salary of the workman was fixed as per his seniority. Hence, there is no violation of any of the Rule.

10. I have given my thoughtful consideration to the rival submission of the authorized representatives of the parties and perused respective pleadings and scanned evidence available on record.

11. The workman in his evidence has stated that he had been adjusted against the post of clerk in the pay scale of Rs. 950-1500 by the Screening Committee in the year 95 and since then he is working and getting salary accordingly. He has also stated that kept on writing the railway administration regarding his pay scale. The workman's union has filed photocopy of representations of the workman dated 01.11.1995, 30.06.1996, 15.12.1996, 15.07.1997, 03.03.1998, 22.01.99 and 27.07.99; whereby he has requested the railway management to adjust him against the post of Senior Clerk w.e.f. 01.10.1995.

12. The management of the northern railway has submitted that while making adjustment of the workman, financial aspect of salary, vacant post, educational qualification, suitability of the post and medical fitness was taken into consideration as per Railway Norms and thereafter the workman was adjusted against the post of the clerk, which was duly accepted by the workman. Hence, same cannot be disputed later on. The management has come up with a submission vide application, paper No. C-34, wherein it has been mentioned that the workman was called for suitability test for grant of senior clerk pay scale of Rs. 4500-7000, thrice; but the workman did not turn up, therefore, he is not entitled for any relief in the present industrial dispute. In this regard the management has tried to put evidence to a fact which actually was not taken into his pleadings. As per procedure an evidence without pleading is not appreciable, therefore, the submission of the workman regarding non-turning of the workman is all in vain. Moreover, the management has pleaded that the adjustment of the workman against the post of clerk in pay scale of Rs. 950-1500 was accepted by

the workman; but there is no iota of evidence to substantiate this pleading.

Thus, the management of railway has forwarded evidence to the fact which was not pleaded on one hand and not forwarded any evidence to the fact, which has duly been pleaded by it. On the other hand the workman's union has proved the fact that workman, if it is taken that he accepted the adjustment against the post of clerk, accepted the adjustment given by the management under protest and kept on representing against it vide his representations dated 01.11.1995, 30.06.1996, 15.12.1996, 15.07.1997, 03.03.1998, 22.01.99 and 27.07.99. The above representations of the workman also indicate that having no alternate than to accept the post offered by the management, he accepted the same under protest.

13. The rule position regarding absorption of medically incapacitated staff in alternate employment in the Railway Establishment Rules, relied on by the workman's union is as under:

> "1301. A railway servant who fails in a vision test or otherwise becomes physically incapable of performing the duties of the post which he occupies should not be discharged forthwith but every endeavor should be made to find alternative employment for him as expeditiously as possible. Such employment must be of suitable nature and on reasonable emoluments having regard to the emoluments previously drawn by the railway servant."
>
> A bare perusal of the above rule position shows that when the workman was declared medically unfit for the post he was holding then it was obligatory on the part of the management of railway to provide the workman an alternate employment of suitable nature and on emoluments, keeping in view the emoluments drawn by the employee in his previous post.

14. It is settled law that a person when treated medically unfit for any post during service, then while adjusting him against another post his last pay drawn has to be protected; but this norm was overlooked by the management. Also, the management failed to substantiate its pleadings that the workman ever accepted the adjustment or the pay fixation. The workman has relied on Ram Mehar Singh Vs. Delhi Transport Corporation 2013 (137) FLR 435; wherein Hon'ble Delhi High Court while taking the case of the petitioner who was declared medically unfit as per Medical Board for the post of Driver and accepted the offered post of Store Attended under protest without prejudice to his rights, held the action of the respondents to be illegal.

14. Therefore, in view of the facts and circumstances of the case and law cited hereinabove, I am of opinion that the action of the management of northern railway in not adjusting him against the post carrying pay scale of Rs. 120-2040 was illegal and unjustified. Accordingly, I come to the conclusion that the workman was entitled for adjustment against the pay scale of Rs. 1200-2040 and on implementation of Fifth Pay Commission he would be entitled to the pay scale of Rs. 4500-7000, with consequential benefits.

15. The reference under adjudication is answered accordingly.

16. Award as above.

LUCKNOW.
20th June, 2014.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 9 जुलाई, 2014

का.आ. 2019.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 28/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/06/2014 को प्राप्त हुआ था।

[सं. एल–41011/99/2010–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th July, 2014

S.O. 2019.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Northern Railway, and their workman, which was received by the Central Government on 27/06/2014.

[No. L-41011/99/2010-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM- LABOUR COURT, LUCKNOW

PRESENT :

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 28/2011

Ref. No. L-41011/99/2010-IR(B-I) dated: 11.03.2011

BETWEEN

Mandal Sangathan Mantri
Uttar Railways Karmchari Union
283/63, KH, Gadi Kannora (Premwati Nagar)
Manak Nagar, Lucknow – 16
(Espousing cause of Shri Radhey Shayam)

AND

Senior Divisional Railway Manager (Personnel)
Northern Railway
Hazratganj
Lucknow.

AWARD

1. By order No. L-41011/99/2010-IR(B-I) dated: 11.03.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangathan Mantri, Uttar Railways Karmchari Union, 283/63, KH, Gadi Kannora (Premwati Nagar), Manak Nagar, Lucknow and the Senior Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is:

> "WHETHER THE DEMAND OF UNION REGARDING PLACING SHRI RADHEY SHAYAM S/O SHRI RAM SAMUJH, ASSISTANT LOCO PILOT, LOCO-SHED, LUCKNOW IN THE PANEL OF THE YEAR 1983-84 ABOVE HIS JUNIORS, IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. The union viz. Uttar Railways Karmchari Union raised the present industrial dispute claiming inclusion in the panel for the year 1983-84 above his junior fellows. The management of the railways denied the claim by filing a detailed written statement, stating therein that it is provided under Rules that the employee cannot claim the seniority from the dated of his actual engagement rather the same shall be reckoned from the date of their regular appointment. Therefore, it prayed that the claim of the union is liable to be rejected without any benefit to the workman concerned.

4. The workman's union, in its rejoinder, reiterated its contentions already made in the statement of claim. The management filed documentary evidence in support of its pleading and the date was fixed for evidence of the workman's union. When the workman's union failed to file any evidence in spite of several opportunities being afforded, the management was called upon to file the evidence in support of their case. The authorized representative of the management stated that he has not to file any evidence. Accordingly, the case was fixed for arguments.

5. Heard oral arguments of the authorized representatives of the parties and scanned entire evidence available on file.

6. Initial burden was on the workman's union to prove their pleading with corroborative oral evidence; but it has utterly failed in doing so. In 2008 (118) FLR 1164 M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others, Hon'ble High Court relied upon the law settled by the Apex Court in 1979 (39) FLR 70 (SC) Sanker Chakravarti vs. Britannia Biscuit Co. Ltd., 1979 (39) FLR 70 (SC) V.K. Raj Industries v. Labour Court and others, 1984 (49) FLR 38 Airtech Private Limited v. State of U.P. and others and 1996 (74) FLR 2004 (Alld.) Meritech India Ltd. v. State of U.P. and others; wherein it was observed by the Apex Court:

> "that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

7. In the present case the workman's union has not substantiated its case by way of filing any oral evidence. Mere pleadings are no substitute for proof. It was obligatory on the part of workman's union to come forward with the case that the workman was deprived of the panel for year 1983-84, for which he was eligible; but the workman's union has failed to forward any evidence in support of its claim either oral or documentary. As such, there is no reliable material for recording findings that the alleged action of the management of Northern Railway in denying the workman in the panel of the year 1983-84 is illegal and unjustified.

8. Accordingly, the reference is adjudicated against the workman's union; and as such, I come to the conclusion that the workman, Radhey Shyam is not entitled to any of the relief claimed.

9. Award as above.

LUCKNOW.
09th June, 2014.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 9 जुलाई, 2014

का.आ. 2020.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 48/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल–12012/16/2012–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th July, 2014

S.O. 2020.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of the State Bank of India and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/16/2012-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AT HYDERABAD

PRESENT : SMT. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 26th day of June, 2014

INDUSTRIAL DISPUTE No. I.D. 48/2012

Between:

Sri V. Joseph Babu,
R/o H.No.5-24/26/2,
Pedesanipet, Itanagar,
Tenali, Guntur District.

….Petitioner

AND

1. The Branch Manager,
   State Bank of India,
   BRP Branch, Governorpet,
   Vijayawada – 002.
2. The Asst. General Manager,
   State Bank of India,
   Zonal Office, Admn. Unit,
   Suryaraopet,
   Vijayawada.

….Respondents

APPEARANCES:

For the Petitioner : Party in person

For the Respondent : Sri B.S. Prasad, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/16/2012-IR(B-I) dated 27.7.2012 referred the following dispute between the management of State Bank of India and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action the management of State Bank of India, Vijayawada in terminating the services of Sri V. Joseph Babu, w.e.f. 11.11.2008 is legal and justified? To what relief the workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 48/2012 and notices were issued to the parties.

2. The case stands posted for filing of claim statement and documents by Petitioner.

3. At this stage, Petitioner called absent. Claim statement not filed and there is no representation. Inspite of giving fair opportunity Petitioner is not taking interest in the proceedings. He has not made any claim. In the circumstances, taking that Petitioner got no claim to be made, 'Nil' award is passed.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 26th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 जुलाई, 2014

का.आ. 2021.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद के पंचाट (संदर्भ संख्या 49/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल–12012/18/2012–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 9th July, 2014

S.O. 2021.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of the State Bank of India and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/18/2012-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 26th day of June, 2014

INDUSTRIAL DISPUTE No. I.D. 49/2012

Between:

Sri P. Adiyya,
R/o H.No.8/86,
Modukur (PO),
T.Sundar(M).
Guntur District.

....Petitioner

AND

1. The Branch Manager,
   State Bank of India,
   BRP Branch, Governorpet,
   Vijayawada – 002.
2. The Asst. General Manager,
   State Bank of India,
   Zonal Office, Admn. Unit,
   Suryaraopet,
   Vijayawada.

....Respondents

APPEARANCES :

For the Petitioner : Party in person

For the Respondent : Sri B.S. Prasad, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-12012/18/2012-IR(B-I) dated 27.7.2012 referred the following dispute between the management of State Bank of India and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the action the management of State Bank of India, Vijayawada in terminating the services of Sri A. Adiyya, w.e.f. 11.11.2008 is legal and justified? To what relief the workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 49/2012 and notices were issued to the parties.

2. The case stands posted for filing of claim statement and documents by Petitioner.

3. At this stage, Petitioner called absent. Claim statement not filed and there is no representation. Inspite of giving fair opportunity Petitioner is not taking interest in the proceedings. He has not made any claim. In the circumstances, taking that Petitioner got no claim to be made, 'Nil' award is passed.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 26th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

CORRIGENDUM

New Delhi, the 9th July, 2014

S.O. 2022.—Notification of even number dated 6/5/2014 in line No 2-3 in the place of I.D.No.126/2007, it may be read as C.R.No.126/2007. Other matters will remain the same.

[No. L-40011/21/2007-IR(DU)]

P. K. VENUGOPAL, Section Officer

CORRIGENDUM

New Delhi, the 9th July, 2014

S.O. 2023.—Notification of even number dated 29/01/2014 in line No 2-3 in the place of I.D.No.01/2012, it may be read as C.R.No.01/2012, C.R.No.02/2012 and C.R.No.03/2012. Other matters will remain the same.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

नई दिल्ली, 10 जुलाई, 2014

का.आ. 2024.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा–1 की उप धारा–(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अगस्त, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय–4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय–5 और 6 (धारा–76 की उप धारा–(1) और धारा–77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध केरल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

कोटट्यम जिला के मीनच्चिल तालुक में तलप्पालम

[सं. एस–38013/46/2014–एस.एस.1]

अजय मलिक, अवर सचिव

New Delhi, the 10th July, 2014

S.O. 2024.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Kerala namely :—

Revenue village of Thalappalam in Meenachil Taluk, Kottayam Dist.

[No. S-38013/46/2014-S.S.I]

AJAY MALIK, Under Secy.

नई दिल्ली, 10 जुलाई, 2014

का.आ. 2025.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा–1 की उप धारा–(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अगस्त, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय–4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय–5 और 6 (धारा–76 की उप धारा–(1) और धारा–77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध केरल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

तृश्शूर जिला के तृश्शूर तालुक में मुलयम

[सं. एस–38013/47/2014–एस.एस.1]

अजय मलिक, अवर सचिव

New Delhi, the 10th July, 2014

S.O. 2025.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Kerala namely :—

Revenue village of Mulayam in Thrissur Taluk, Thrissur Dist.

[No. S-38013/47/2014-S.S.I]

AJAY MALIK, Under Secy.

नई दिल्ली, 10 जुलाई, 2014

का.आ. 2026.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा–1 की उप धारा–(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अगस्त, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय–4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय–5 और 6 (धारा–76 की उप धारा–(1) और धारा–77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध केरल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

पालक्काड जिला के चिट्टूर तालुक में तेक्केदेशम

[सं. एस–38013/48/2014–एस.एस.1]

अजय मलिक, अवर सचिव

New Delhi, the 10th July, 2014

S.O. 2026.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Kerala namely :—

Revenue village of Thekkedesam in Chittur Taluk, Palakkad Dist.

[No. S-38013/48/2014-S.S.I]

AJAY MALIK, Under Secy.

नई दिल्ली, 10 जुलाई, 2014

का.आ. 2027.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा–1 की उप धारा–(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अगस्त, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय–4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय–5 और 6 (धारा–76 की उप धारा–(1)

और धारा–77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध केरल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

पालक्काड जिला के ओटटप्पालम तालुक में आनक्करा

[सं. एस–38013 / 49 / 2014–एस.एस.1]

अजय मलिक, अवर सचिव

New Delhi, the 10th July, 2014

S.O. 2027.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Kerala namely :—

Revenue village of Anakkara in Ottapalam Taluk, Palakkad Dist.

[No. S-38013/49/2014-S.S.I]

AJAY MALIK, Under Secy.

नई दिल्ली, 10 जुलाई, 2014

का.आ. 2028.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा–1 की उप धारा–(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अगस्त, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय–4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय–5 और 6 (धारा–76 की उप धारा–(1) और धारा–77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध केरल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

मलप्पुरम जिला के पोन्नानी तालुक में कालडी

[सं. एस–38013 / 50 / 2014–एस.एस.1]

अजय मलिक, अवर सचिव

New Delhi, the 10th July, 2014

S.O. 2028.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Kerala namely :—

Revenue village of Kalady in Ponnani Taluk, Malappuram Dist.

[No. S-38013/50/2014-S.S.I]

AJAY MALIK, Under Secy.

नई दिल्ली, 10 जुलाई, 2014

का.आ. 2029.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा–1 की उप धारा–(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अगस्त, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय–4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय–5 और 6 (धारा–76 की उप धारा–(1) और धारा–77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध केरल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

तिरूवनुततपुरम जिला के नेडुमंगाड तालुक में अरूविक्करा

[सं. एस–38013 / 52 / 2014–एस.एस.1]

अजय मलिक, अवर सचिव

New Delhi, the 10th July, 2014

S.O. 2029.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Kerala namely :—

Revenue village of Aruvikkara in Nedumangad Taluk, Thiruvananthapuram Dist.

[No. S-38013/52/2014-S.S.I]

AJAY MALIK, Under Secy.

नई दिल्ली, 10 जुलाई, 2014

का.आ. 2030.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा–1 की उप धारा–(3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 01 अगस्त, 2014 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय–4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय–5 और 6 (धारा–76 की उप धारा–(1) और धारा–77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है) के उपबंध केरल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :

तिरूवनुंततपुरम जिला के नेडुमंगाड तालुक में वेल्लनाड

[सं. एस–38013 / 53 / 2014–एस.एस.1]

अजय मलिक, अवर सचिव

New Delhi, the 10th July, 2014

S.O. 2030.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st August, 2014 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI (except Sub-Section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force) of the said Act shall come into force in the following areas in the State of Kerala namely :—

Revenue village of Vellanad in Nedumangad Taluk, Thiruvananthapuram Dist.

[No. S-38013/53/2014-S.S.I]

AJAY MALIK, Under Secy.

नई दिल्ली, 11 जुलाई, 2014

का.आ. 2031.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 84/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल–41012/37/2009–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th July, 2014

S.O. 2031.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2013) of the Central Government Industrial Tribunal/Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Northern Railway, and their workman, received by the Central Government on 04/07/2014.

[No. L-41012/37/2009-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 26th June, 2014

PRESENT : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 84/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Southern Railway, Madurai and their workman)

BETWEEN

Sri M. Manoharan : 1st Party/Petitioner

AND

1. The Divisional Railway Manager Southern Railway Madurai Division Madurai : 2nd Party/Respondent
2. The Senior Divisional Mechanical Engineer Southern Railway Madurai

APPEARANCE :

For the 1st Party/Petitioner : Sri P.K. Parameswaran, Advocate

For the 1st Party/1st & 2nd Respondent : Sri P. Srinivasan, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-41012/37/2009-IR(B-I) dated 04.09.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the Divisional Railway Manager, Southern Railway, Madurai in imposing a penalty of removal from service on Sri M. Manoharan, Ex-Helper (Mechanical) w.e.f. 15.04.2001 is legal and justified? To what relief the workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 84/2013 and issued notices to both sides. Both parties have entered appearance through their counsel and filed their claim and counter statements respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner was engaged as Casual Labourer on daily wages by the Southern Railway in 1979. He was granted temporary status in 1980. Due to closure of major stream loco sheds in the Salem Division where he was working he was re-deployed in Madurai Division in 1983 and he was appointed Khalasi Helper in 1986 and was promoted as C&W Khalasi in the year 1989. He had been working to the utmost satisfaction of his superiors. On 01.07.1994 the petitioner had submitted an application to the Divisional Engineer seeking transfer to Salem Since his family was staying at Salem. His mother was aged and ill and his wife was also suffering from medical complications. The request for transfer made by the

petitioner was not considered. When his mother and wife were both attacked by jaundice, the petitioner was forced to take care of them and he had to take leave from 22.10.1998 to 17.06.1999. He reported for work on 18.06.1999 after duly submitting his explanation for his absence. The punishment of stopping of increment for one year was imposed on the petitioner. After he rejoined duty a Railway Quarters was allotted to him. After one and half years of his rejoining duty he was directed to appear for an enquiry on 24.10.2000 in respect of the alleged charge of unauthorized absence from 22.10.1998 to 17.06.1999. During the enquiry the petitioner had explained the circumstances under which he was absent from duty. He had pleaded that his absence was not willful. Without considering the plea of the petitioner the Enquiry Officer held that the charge against the petitioner is established. The petitioner had given his submission to the Disciplinary Authority against the findings of the Enquiry Officer. Without considering this, the penalty of removal from service w.e.f. 14.04.2001 was imposed on the petitioner. The petitioner had preferred an appeal against this order. However, the Appellate Authority confirmed the order of the Disciplinary Authority. The dispute was raised in the above circumstances. Since the Management was not willing for a conciliation, a failure report was sent by the Asstt. Labour Commissioner at Madurai. The dispute has been accordingly referred to this Tribunal for adjudication. The punishment awarded to the petitioner is disproportionate to the offence allegedly committed by him. There is no justification for the punishment imposed on the petitioner. The petitioner is entitled to an order reinstating him in service with continuity of service, back wages and other benefits.

4. The Respondent has filed Counter Statement contending as follows:

The claim of the petitioner is barred by the Law of Limitation. The petitioner had absented from duty from 22.10.1998. A charge memorandum dated 19.02.1999 was issued to him for the misconduct of unauthorized absence from duty. The petitioner received the charge memo on 19.07.1999. The explanation submitted by the petitioner to the charge was not acceptable. An Enquiry Officer was appointed to enquire into the charges against the petitioner. On conducting enquiry the petitioner was found guilty of the charges against him. The report of the Enquiry Officer could be served on the petitioner on 13.01.2001 only since the petitioner was again absent from duty unauthorizedly from 30.10.2000. The Disciplinary Authority had considered the explanation submitted by the petitioner and imposed the penalty of removal from service. Since the petitioner continued to be absent unauthorizedly the penalty imposed was exhibited on the Notice Board. It was sent to his residential address at Salem also. He had submitted his appeal to the Appellate Authority after a lapse of two years. The order upholding the penalty of removal from service was communicated to the petitioner by letter dated 27.11.2003. The petitioner was continuously residing at Salem Town only. The case of the petitioner that he was residing in a remote area at Yercaud is not correct. No records are available to show that the penalty of stoppage of increment for one year was imposed on the petitioner. The petitioner is put to strict proof regarding this. The petitioner himself had admitted that he had committed the misconduct of unauthorized absence from duty. He has not informed his superiors about his absence. The petitioner is not entitled to any relief.

5. The evidence in the case consists of documents marked as Ext.W1 to Ext.W30 and Ext.M1 to Ext.M10. No oral evidence was adduced by either side.

6. The points for consideration are :

(i) Whether the action of the management in imposing the penalty of removal from service on the petitioner is legal and justified?

(ii) What is the relief, if any, to which the petitioner is entitled?

The Points

7. The petitioner who was working in Southern Railway, Madurai Division as Khalasi was imposed the punishment of removal from service by the Disciplinary Authority for his alleged unauthorized absence for the period from 22.10.1998 to 17.06.1999. After two years of receipt of communication of removal from service, the petitioner had filed an appeal before the Appellate Authority and the Appellate Authority had confirmed the order of removal from service by order dated 27.11.2003. After 5 years, on 28.01.2009 by letter which is marked as Ext.W16 the petitioner has raised the dispute before the Asstt. Labour Commissioner (Central) seeking conciliation. The conciliation has ended in failure, a failure report was given to the Government and the Government has referred the matter to this Tribunal for adjudication.

8. Even in the Claim Statement the petitioner does not dispute the case of the Management that he was absent from duty for the period from 22.10.1998 to 17.06.1999. There is also no case for the petitioner that he had submitted leave application or had given any information to the authorities regarding his absence. He seems to have subsequently rejoined duty and worked for some more time. Meanwhile disciplinary proceedings had been initiated against him for his unauthorized absence, enquiry was conducted and the punishment of removal from service was imposed on him. As could be seen from the Counter Statement, even before the enquiry report could be served on the petitioner he had again been absenting himself from duty unauthorizedly. Report of

enquiry was served on him at his residential address. He had submitted explanation on the report with some delay which was not accepted by the Disciplinary Authority and the punishment of removal from service was imposed on him. At this time also he was not available at the work premises because of his absence and the order of removal from service had to be exhibited at the premises and had to be sent at his residential address.

9. The petitioner had apparently participated in the enquiry. The concerned Head Clerk had been examined on the management's side and the Muster roll pertaining to the petitioner had been marked. Thus the Management had proved that the petitioner was absent during the relevant period. Admittedly the petitioner had not given any leave application. Though he has stated that on rejoining duty he has given explanation and the punishment of stoppage of increment for one year has been imposed on him. This is disputed by the Respondent. No document on the part of petitioner has been produced also to prove that any such punishment has been imposed. So this case of the petitioner seems unlikely, especially in view of the proceedings initiated against the petitioner subsequently on the ground of his unauthorized absence.

10. The petitioner himself is seen examined in the enquiry proceedings. The petitioner has admitted during his examination that he was absent from duty from 22.10.1998 and reported for duty on 18.06.1999 only. The reason he has given during his examination for his absence is that his wife was having the illness of jaundice and she had to undergo native treatment and so he was not in a position to attend duty as he had to help his family. He has further stated that his native place is Yercaud Hills near Salem which is a remote area where there is no Post Office or any other facilities and he was not in a position to contact his superiors. He also admitted that he is aware that unauthorized absence is a severe misconduct as per the Railway Rules.

11. As could be seen, there is no dispute regarding the fact that the petitioner was absent from duty for the period from 22.10.1998 to 17.06.1999 and that he did not submit any leave application to the authorities for his absence. He was thus absent for a long period of 8 months. Absenting oneself while working in an establishment, especially in a government establishment which owes its existence to the general public for such a long period is something that is not expected on the part of an employee. The question to be considered is whether this absence on the part of the petitioner was willful or whether there was any acceptable reason for this absence. The reason given by the petitioner in his Claim Statement is that his mother and wife were both affected by jaundice, he was forced to remain at home at Yercaud to help them and he was not able to contact his superiors. In the enquiry proceedings what the petitioner has stated is that his wife has been suffering from jaundice and he had to help the family because of her illness. The case that his mother was also suffering from illness is not seen stated by him in the enquiry proceedings. Earlier in Ext.W14 he had some other explanation for his absence. He has claimed that because of debt and other problems in the family he was not well mentally and he was not able to attend his work. At that time there was no case of illness of his wife and mother.

12. Even assuming that two members of the family of the petitioner were suffering from severe illness, is it a sufficient reason for the petitioner to remain absent without giving any information to this superiors, without taking any leave and without any permission? The case that is projected by the petitioner is that his residence is at Yercaud Hills, it is a remote area and it has been impossible for him to contact his superiors and inform them about his absence. This case of the petitioner that Yercaud is a remote area is disputed in the Counter Statement. According to the Respondents Yercaud is a place of tourist attraction and has got all the facilities of a town. The incident was in 1998 and even by then communication facilities have developed well. So it is difficult to accept the case of the petitioner that he could not communicate to his superiors. It is more difficult to believe his case that there is not even a Post Office at Yercaud. The country is sufficiently advanced and is having Post Office facility at every nook and corner. The petitioner did not find time even to send a letter asking for leave.

13. Even from the Claim Statement it could be seen that the petitioner was shuttling in between his native place and Madurai at which place he was working. What he has stated in his Claim Statement is that since his request for transfer to Salem was not considered he had been going to Salem whenever situation warranted and he had been attending the medical treatment of his mother and wife. So it is clear that he had been travelling to his native place whenever required. So it would not have been difficult for him to intimate the authorities about his absence by one or other means. Apart from all these no documents are produced to show that his wife and mother had fallen ill at the same time and had been undergoing treatment.

14. It has been contended by the Respondents that the address of the petitioner given is of Salem and not Yercaud. According to them, the residence of the petitioner is at Salem itself and not Yercaud. In spite of his contention, the petitioner has not produced any document to show that he is a resident of Yercaud. Ext.W14, the copy of the letter written by the petitioner to the Minister for Railways refers to him as a resident of Arisipalayam at Salem Town and not Yercaud. In the Claim Statement also this is the address given. This itself would disprove the case of the petitioner that his residence is in remote area of Yercaud. When all these are considered it could be seen that the absence of the petitioner was a willful one.

15. The subsequent conduct of the petitioner also would justify a refusal of the claim of the petitioner for reinstatement. The Respondents have contended in the Counter Statement that the case is barred by limitation. The matter having been referred by the Government, there is no question of limitation becoming applicable to the case. However, the conduct of the petitioner is the best example for the latches on his part. As is seen from the enquiry proceedings he has been remaining absent from duty even before the enquiry report was served on him. He had thought of filing an appeal against the order of the Disciplinary Authority only after two years of service of the order upon him. He had taken another 5 years to raise the dispute before the Assistant Labour Commissioner after the Appellate Authority had confirmed the order of the Disciplinary Authority. These would show that the petitioner was never concerned about his job. He had raised the dispute too late. This is also a factor to be taken into account even though his claim is not barred by limitation. I find the petitioner is not entitled to any relief.

16. In view of my discussion above, the reference is answered against the petitioner.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 26th June, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/1st & 2nd Management : None

Documents Marked

On the Petitioner's side

Ex. No.	Date	Description
Ex.W1	08.02.1982	Letter No. J/P/533/V/Surplus/Staff dated 08.02.1982. Surplus staff in Mechanical Department Absorption in alternate job
Ex.W2	30.04.1987	Letter No. U/P 612/IV/Staff No./ MP5 Divisional Officer Personnel Branch, Madurai dated 30.04.1987 Staff Number Assigning of
Ex.W3	18.12.1989	Promotion List – under ref. SR 0.0 No. 17/IV/89/C&W KH/MP5 dated 18.12.1989
Ex.W4	28.08.1989	S.R. letter No. U/P 555/MDU/ Allotment Ho. Committee/ divisional Office/Personnel Branch, Madurai Allotment of quarters at Madurai – M. Manoharan
Ex.W5	21.10.2000	S.R. No. UM/RMM.SA1-SE/ C&W/O/RMM dated 21.10.2000 relieving of staff to attend enquiry
Ex.W6	23.10.2000	Senior Loco Inspector, Madurai Letter dated 23.10.2000 relieving after enquiry and advice to report for duty.
Ex.W7	23.10.2000	Enquiry proceedings against M. Manoharan 2934/MDU regarding absence from 22.10.1998 onwards dated 23.10.2000
Ex.W8	28.10.2000	Enquiry Report dated 28.10.2000 – M. Manoharan 2934 C&W/KH/ MDU now @ RMM regarding absence from 22.10.1998 onwards
Ex.W9	07.04.2001	Lr.No. &/TP 28/II/3/UA/C&W/ MDU/V/2/99 Division Office, Mechanical Branch, Madurai dated 07.04.2001 Penalty Advice
Ex.W10	25.07.2003	M. Manoharan letter addressed to Divisional Manager, C&W Madurai regarding re-examination request for reinstatement
Ex.W11	28.07.2003	Postal Acknowledgement Card
Ex.W12	25.07.2003	M. Manoharan letter addressed to Divisional Personnel Manager, Divisional Office, Madurai regarding re-examination request for reinstatement
Ex.W13	28.07.2003	Postal Acknowledgement Card
Ex.W14	25.07.2003	M. Manoharan's request with Railway Ministry
Ex.W15	25.08.2003	Additional Private Secretary to Ministry of State for Railways Acknowledgement
Ex.W16	28.01.2009	M Manoharan's requisition letter to the Assistant Labour Commissioner (Central) Madurai for conciliation
Ex.W17	04.02.2009	No. 8/3/2009-AM dated 04.02.2009 call letter
Ex.W18	05.08.2009	No. 8/3/2009-A/M dated 05.08.2009 Hearing letter 12.08.2009
Ex.W19	31.08.2009	Southern Railway No. U/P.574/ ALC/MDU Divisional Office, Personnel Branch, Madurai dated 31.08.2009 Representation
Ex.W20	13.08.2009	No. 8/3/2009-AM dated 13.08.2009 Hearing letter

Ex.W21	24.09.2009	Order Asstt. Labour Commissioner (Central) Madurai Report No. 8/3/2009-A/M dated 24.09.2009
Ex.W22	14.10.2009	M. Manoharan's Review petition to the General Manager, Southern Railway, Chennai
Ex.W23	12.10.2010	Southern Railway letter ref. No. P(A)/90/Misc./Vol.III dated 08.01.2010
Ex.W24	22.02.2010	M. Manoharan's letter Asstt. Personnel Manager, Chennai regarding reinstatement
Ex.W25	10.01.2011	Order No. L-41012/37/IR(B-I) Govt. of India, Bharat Sarkar, Ministry of Labour/Shram Mantralaya, New Delhi dated 10.01.2011
Ex.W26	24.08.2013	M. Manoharan's letters to the Secretary, Ministry of Labour and Employment, Govt. of India, New Delhi
Ex.W27	04.09.2013	No. L-41012/37/2009 IR (B1) Govt. of India, Bharat Sarkar, Ministry of Labour, Shram Mantralaya dated 04.09.2013
Ex.W28	11.09.2013	Assistant Labour Commissioner (Central) Madurai Office Lr. No. 95/Misc.2014=A/M dated 11.09.2013
Ex.W29	16.09.2013	Notice received from Industrial-cum-Labour Court, Chennai
Ex.W30	31.08.2013	Petitioners/Claimants mother pension Post Office Pass Book Family Pension Book Railway Family Pension

On the Management' side

Ex.No.	Date	Description
Ex.M1	19.02.1999	Charge Memorandum
Ex.M2	07.06.1999	Letter to the 1st Party by the 2nd Respondent
Ex.M3	13.08.1999	Order appointing Enquiry Officer
Ex.M4	28.10.2000	Enquiry Report
Ex.M5	13.01.2001	Acknowledgement of receipt of Enquiry Report
Ex.M6	18.01.2001	Petitioner's representation to the 2nd Respondent
Ex.M7	07.04.2001	Penalty advice
Ex.M8	15.04.2001	Letter of SSE (C&W) to the 2nd Respondent
Ex.M9	25.07.2003	Petitioner's representation to the Divisional Mechanical Engineer/ Madurai
Ex.M10	27.11.2003	Order in Appeal.

नई दिल्ली, 11 जुलाई, 2014

का.आ. 2032.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 80/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल–12012/53/2012–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 11th July, 2014

S.O. 2032.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 80/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai, now as shown in the Annexure, in the Industrial Dispute between the management of the State Bank of India and their workmen, which was received by the Central Government on 04/07/2014.

[No. L-12012/53/2012-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 21st May, 2014

PRESENT : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 80/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and their workman)

BETWEEN

Sri G. Mathan : 1st Party/Petitioner

AND

The Asstt. General Manager (Admn.) Disciplinary Authority, State Bank of India Disciplinary Proceedings Cell Network 2 : 2nd Party/Respondent

Administrative Unit,
Kurinji Complex
State Bank Road
Coimbatore-641018

APPEARANCES :

For the 1st Party/ Petitioner	: M/s. Balan Haridas, Advocates
For the 2nd Party/ Respondent	: M/s. T.S. Gopalan, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/53/2012-IR (B-I) dated 15.10.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of State Bank of India, Chennai in imposing the penalty of removal from service with superannuation benefits upon Sri G. Mathan, General Attendant, Kadathur Branch, is legal and justified? To what relief the workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 80/2012 and issued notice to both sides. Both sides entered appearance through their counsel and filed claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these :

The petitioner joined the services of the Respondent Bank as Gardener in 1997. During the year 2007 he was working as General Attendant in Kadathur Branch of the Bank. The petitioner was placed under suspension by order dated 09.01.2008. It is alleged that the petitioner had forged the signature of one Rajan having Savings Bank Account in the bank and withdrawn amount. After this the Respondent issued a Show Cause Notice to the petitioner alleging that he had withdrawn Rs. 41,000/- from the SB Account of Rajan by forging the signature in the withdrawal slip during the period from 27.05.2005 to 31.10.2005. The petitioner had given reply to the Show Cause Notice issued to him. On 03.10.2008 the respondent issued Charge Memo to the petitioner based on allegations made in the Show Cause Notice. An enquiry was conducted on the allegations and the Enquiry Officer had given a report finding that the charge against the petitioner are proved. On the basis of the enquiry report, the Disciplinary Authority imposed the punishment of removal from service with superannuation benefits on the petitioner. The petitioner had filed appeal against the order of the Disciplinary Authority. The appeal has been dismissed. The petitioner was acquitted of the criminal charges made against him by the judgment of the Judicial Magistrate No. 1, Dharmapuri dated 09.03.2011. The punishment imposed on the petitioner is illegal. The petitioner has not committed any misconduct as alleged. Enquiry against the petitioner was conducted in an unfair manner. The petitioner was found guilty of the charges on the basis of the report of the forensic expert alone. There is no justification for the punishment imposed. In any case the punishment imposed is grossly disproportionate to the charges leveled against the petitioner. An order may be passed directing the Respondent to reinstate the petitioner with back wages, continuity of service and all other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows:

The Respondent is a nationalized bank having branches throughout the country including one at Dharmapuri in Tamil Nadu. One Raja had SB Account in the branch for the purpose of loan to purchase a tractor and he was given the loan. On 21.11.2006, when he came to the branch to close the account with the balance amount standing to the credit of his SB Account, he was informed that there is no sufficient balance in the account to clear the loan. On verification of entries in his account Raja disputed certain withdrawals. On 22.11.2006 he gave a complaint that seven withdrawals made between 27.07.2005 and 31.10.2005 amounting to Rs. 41,000/- were not drawn by him. He disputed the signature in the withdrawal forms. Challans pertaining to two of the seven withdrawals were not traceable and were missing. On questioning the Single Window operators it was revealed that some of the Sub-Staff including the petitioner used to present withdrawal slips and collect cash. The specimen handwriting of the petitioner as well as that of Ganesan, another Sub-Staff were offered to Forensic Department, Chennai. The FD opined that the challans were filled in the handwriting of the petitioner. The petitioner was issued a show Cause Notice and he gave a reply denying the charges. He was issued a Charge Sheet on 03.10.2008 and he has given an explanation also. An enquiry was conducted on the charges against the petitioner and the Enquiry Officer gave his report holding that the charges of forgery and misappropriation of money of account holder Raja were proved. Based on this report the Disciplinary Authority imposed punishment of removal from service with superannuation benefits on the petitioner. The punishment is fully justified and does not call for interference. The judgment of the Criminal Court has no bearing on the charge against the petitioner. The petitioner is not entitled to any relief.

5. Though in the Claim Statement there is contention for the petitioner that enquiry was not conducted in a fair and proper manner, no such contention was advanced during the trial. Both sides have advanced arguments based on the documents pertaining to the domestic enquiry conducted by the Respondent.

6. The evidence in the case consists of oral evidence of petitioner examined as WW1 and documents marked as Ext.W1 to Ext.W30 and Ext.M1 to Ext.M5

7. **The points for consideration are :**

(i) Whether the action of the Respondent in imposing the penalty of removal from service with superannuation benefits on the petitioner is legal and justified?

(ii) What is the relief, if any, to which the petitioner is entitled?

The Points

8. The petitioner who had joined the service of the Respondent Bank as Gardener in 1997 was working as General Attendant in Dharmapuri branch at the time of the incident. It is alleged against the petitioner that he made withdrawals from the SB account of one Rajan, a customer of the Bank by forging the signature in the withdrawal slips and misappropriated the amount. Ext.W4 is the Charge Memo issued to the petitioner. The details of the withdrawals as seen from the Charge Memo are that he had withdrawn Rs. 5,000 on 27.07.2005, another Rs. 5,000 on 30.07.2005, Rs. 10,000 each on 05.08.2005, 05.09.2005 and 15.09.2005 and Rs. 500 each on 20.10.2005 and 31.10.2005 thus amounting to Rs. 41,000. As seen from the Counter Statement the account holder had approached the branch to close his loan account using the balance amount in his SB Account. But to his surprise he was told that there is no amount sufficient enough to close the loan account, in his SB Account. He verified the account and made a complaint that the withdrawals referred to above were not made by him. The Single Window Operators of the bank were enquired with about the complaint and they informed that three Sub-Staffs of the bank used to make withdrawals on behalf of the customers. It was noticed that the petitioner as well as Ganesan, another Sub-Staff used to misspell the word thousand in the withdrawals slips. On the basis of this the disputed challans and the handwritings of the petitioner as well as that of Ganesan and also that of the account holder Rajan were sent to the Forensic Department at Chennai. The Forensic Department gave a report stating that the disputed withdrawal slips are in the handwriting of the petitioner. It is accordingly charge sheet was issued on the petitioner and an enquiry was conducted against him.

9. In the enquiry proceedings the list of prosecution witnesses gives the names of 6 persons including the account holder Rajan and one Jaffer, a Special Assistant. However, these two persons are not seen examined in the enquiry proceedings.

10. The Manager of the concerned Bank was examined as PW2. He has stated that account holder Rajan had given the complaint to the Chief Manager. PW2 has stated that vouchers in respect of the disputed withdrawals were scrutinized. He has added that though money is said to have been given to the staff, no signature has been obtained on the reverse side of the voucher as was the practice. This witness has also stated about the sending of the handwritings of the petitioner, the other staff, etc. to the Forensic Department at Chennai alongwith the withdrawal forms in question. As could be seen, the evidence of this witness is not of much use in proving the case against the petitioner.

11. PW3 was the Special Assistant of the Dharmapuri Town Branch. This witness has stated that at the Cash Counter cash used to be paid to the customers as well as to the staff. He has also stated that it was as customer service that the staff was withdrawing money and paying it to the customer. When he was asked if the petitioner has approached him at the Counter for withdrawing the money of a third party, he has stated that he does not know. When he was asked about the withdrawal of Rs. 5,000/- from the account of Rajan on 27.07.2005, he has stated that he does not know who has withdrawn the amount. The other disputed withdrawals also were put to this witness and he has stated that he does not know who made the withdrawals. Thus it could be seen that PW3 has not stated anything against the petitioner. His evidence is not of any use in pinpointing the petitioner with the charge that he has withdrawn amount from the account of Rajan using forged withdrawal slips.

12. PW4 who is the Sr. Head Messenger of the Respondent was working at Dharmapuri branch during the relevant period. This witness has stated that at Dharmapuri branch it was the practice that staff members would remit and withdraw cash for customers. In this manner the petitioner also used to remit and withdraw cash on behalf of the customers. He does not know if the petitioner used to approach the Cashier for his own withdrawal only or even for withdrawal of money on behalf of third party. When this witness was asked about the disputed withdrawals he stated that he does not know to whom these payments were made.

13. PW6 is the one who examined the handwritings of the petitioner, that of Ganesan and Rajan, the customer and submitted report. He was the director of Forensic Department, Chennai Ext.W29 is the report given by this witness. This witness has given the report that the withdrawal slips were written in the handwriting of the petitioner. During his evidence also he has asserted this fact. There is no reason to reject the opinion given by PW6. When the circumstances are considered, it is very much clear that withdrawal slips that were used for withdrawing amount from the account of Rajan are in the handwriting of the petitioner himself.

14. Is the evidence referred to above sufficient to establish that the petitioner was the one who withdrew money from the account of Rajan, the account holder

unauthorizedly? The account holder himself has not been examined. He has not come forward to state that he did not put his signature in the withdrawal slips for withdrawing money. The Enquiry Officer seems to have been mainly relying upon the report of the forensic expert to come to the conclusion that the petitioner must have withdrawn money from the account of Rajan. He has also taken support from the evidence of PW4 who has stated that there was the practice of the Sub-Staffs remitting and withdrawing cash for customers, in the branch. *I have already been referring to the evidence of PW4. PW4 has not stated that the particular withdrawals were made by the petitioner. No other witnesses also have made such a statement.

15. When the practice of the bank is taken into account it is quite probable that the Sub-Staff were filling the withdrawals forms for the customers of the bank. In the normal course, the customers who have come to the bank will be putting their signature in the withdrawal forms which will be presented at the counter by the Sub-Staff for withdrawing money. The staff will be immediately handing over the money to the customer also. So there was nothing unusual in the handwriting of the petitioner appearing in the concerned withdrawal slips, when the practice of the bank is taken into account. The Forensic Expert did not say that the signature in the withdrawal slips were put by the petitioner. Of course he has stated that it is not the signature of the customer. But on this basis alone it cannot be inferred that the signature also must have been put by the petitioner himself. The concerned vouchers do not contain any signature on the reverse side. So it is clear that whoever was at the Cash Counter was allowing withdrawal without complying with the procedure.

16. The counsel for the petitioner has pointed out that the petitioner was acquitted of the Criminal Case initiated against him regarding the incident. Ext.W17 is the judgment of the Judicial Magistrate No. 1, Dharmapuri finding the accused not guilty of the charges and acquitting him. The petitioner is seen charged for offences under Sections-468, 471 and Section-320 of the IPC. He was acquitted of all the three offences charged. This judgment has become final. The Magistrate has referred to the concerned witnesses and has pointed out that they have not assertively deposed that the petitioner presented the withdrawal slips and obtained the amount. This is the case in the enquiry proceedings also.

17. According to the counsel for the petitioner the petitioner was charged in the enquiry with the same offences he was charged in the criminal proceedings. According to him, since the Criminal Case has resulted in acquittal, the punishment imposed on the petitioner by the enquiry proceedings will not lie. The counsel has referred to the decision in CHINNADURAI VS. INSPECTOR GENERAL OF REGISTRATION, CHENNAI reported in 2012 2 LLN 543 in this respect. In this the Madras High Court has relied upon the decision of the Apex Court in PAUL ANTONY VS. BHARAT GOLDMINES LTD. 1999 3 SCC 679 where it was held that if the Criminal Case and the Departmental Proceedings are based on identical set of facts and the findings recorded by the Enquiry Officer vindicate that the charges framed against the delinquent was not proved and the delinquent having been acquitted in the Criminal Case by a Judicial pronouncement it would be unjust, unfair and rather oppressive to allow the findings recorded at the departmental proceedings to stand. Since the facts and the evidence in both the department and criminal proceedings are the same, without there being any iota of difference, the distinction which is usually drawn as between the Departmental Proceedings and the Criminal Court on the basis of approach and burden of proof would not be applicable to the case, it was further held.

18. In the present case, the charges that were faced by the petitioner in the Criminal Court as well as in the Departmental Proceedings are the same. The Criminal Court having entered the verdict of acquittal the petitioner is entitled to the benefit of the dictum laid down by the Apex Court in the decision referred to above. Even otherwise the material available in the enquiry proceedings is not sufficient to establish that the petitioner is the one who had withdrawn amount using the withdrawal slips in question. I find that there is no legal or factual basis for the punishment imposed on the petitioner. The same is to be set aside. The petitioner is entitled to be reinstated in service.

18. The petitioner has claimed back wages alongwith the relief of reinstatement. He has given evidence before this Tribunal that he was not employed after he was removed from service by the Respondent. Considering the circumstances, I am inclined to allow 50% of the back wages to the petitioner. Accordingly an order is passed as follows:

The Respondent is directed to reinstate the petitioner in service with 50% back wages within a month. If the amount is not paid within the period prescribed it will carry interest @ 9% per annum.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st May, 2014)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/ Petitioner	:	WW1, Sri G. Mathan
For the 2nd Party/ Management	:	None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	09.01.2008	Suspension Order
Ex.W2	25.02.2008	Show Cause Notice
Ex.W3	31.03.2008	Reply of petitioner
Ex.W4	03.10.2008	Charge Memo
Ex.W5	05.11.2008	Explanation of Charge Memo
Ex.W6	08.11.2008	Enquiry Notice
Ex.W7	19.11.2008	Letter of the petitioner
Ex.W8	-	Enquiry Proceeding
Ex.W9	04.03.2010	Letter given by the petitioner
Ex.W10	12.10.2010	Enquiry report
Ex.W11	03.11.2010	Reply of Enquiry report
Ex.W12	19.11.2010	Second Show Cause Notice
Ex.W13	06.12.2010	Dismissal Order
Ex.W14	21.01.2011	Appeal filed by the petitioner
Ex.W15	08.04.2011	Represented by the petitioner
Ex.W16	30.04.2011	Order of Appellate Authority
Ex.W17	09.03.2011	Acquittal order of Judicial Magistrate Court
Ex.W18	14.06.2011	Petition filed before ACL
Ex.W19	-	Counter filed before ACL
Ex.W20	22.11.2006	Letter of A. Rajan
Ex.W21	27.07.2006	Payment voucher
Ex.W22	30.07.2005	Payment voucher
Ex.W23	05.08.2005	Payment voucher
Ex.W24	05.09.2005	Payment voucher
Ex.W25	20.10.2005	Payment voucher
Ex.W26	28.12.2007	Letter from SI of Police
Ex.W27	26.12.2007	FIR Copy
Ex.W28	24.04.2007	Letter to Forensic Department
Ex.W29	02.05.2007	Report of Forensic Department
Ex.W30	03.10.2008	Charge Memo

On the Management's side

Ex.No.	Date	Description
Ex.M1	08.12.2006	Letter from Chief Manager, State Bank of India, Dharmapuri to AGM – Operation, Z.O., Coimbatore intimating that paid vouchers 15.09.2005 and 31.10.2005 are not traceable in the branches
Ex.M2	20.07.2010	Presenting Officer's summing up
Ex.M3	06.08.2010	Defence Officer's summing up
Ex.M4	01.12.2010	Proceedings of personal hearing before the Disciplinary Authority
Ex.M5	01.12.2010	Written submission of the petitioner in the personal hearing

नई दिल्ली, 11 जुलाई, 2014

का.आ. 2033.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 95/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.07.2014 को प्राप्त हुआ था।

[सं. एल–12012/116/2000–आईआर(बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 11th July, 2014

S.O. 2033.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 95/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai as shown in the Annexure in the Industrial Dispute between the management of the Union Bank of India and their workmen, received by the Central Government on 11/07/2014.

[No. L-12012/116/2000-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/95 of 2000

EMPLOYERS IN RELATION TO THE MANAGEMENT OF UNION BANK OF INDIA

The Regional Manager
Union Bank of India
Daulat Building, 3rd floor
18th June
Panaji
Goa-403 001.

AND

THEIR WORKMEN
Shri Deepak D. Naik
H. No.339/2
Peacan Coimawaddo
Quitala
Aldona, Bardez
Goa-403 508.

APPEARANCES :

FOR THE EMPLOYER : Mr. A.V. Pavithran, Advocate

FOR THE WORKMAN : Mr. P. J. Kamat, Advocate

Mumbai, dated the 21st May, 2014.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-12012 / 116 /2000-IR (B-II), dated 29.09.2000 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the claim of Shri Deepak D. Naik, Peon/ Sub-Staff of Mapusa Branch of Union Bank of India that he has worked continuously with the management of Union Bank of India, Goa from 22/11/1996 to 03/08/1999 and the management has illegally terminated his service w.e.f. 04.08.1999 is legal and justified? If yes, what relief the workman is entitled for?"

2. After receipt of the reference notices were issued to both the parties. In response to the notice second party workman filed his statement of claim at Ex-5. According to workman he was appointed as Sub staff (Peon) in the first party Bank against clear vacancy on daily wages. He was appointed from 27/11/1996 and he worked continuously till 03/08/1999. Though he worked continuously for more than 240 days the first party abruptly terminated his services without any notice pay and retrenchment compensation. The first party violated the provisions of Section 25 F of the I.D. Act. The representation of the workman was not considered by the authority of first party. Therefore workman raised industrial dispute before ALC (C) Goa. As conciliation failed on the report of ALC (C) the Central Labour Ministry has sent the reference to this Tribunal. According to the workman his termination was illegal. Therefore he prays that he be reinstated in service with full back wages.

3. The first party management resisted the claim vide its written statement at Ex-8. According to them the workman was never appointed against clear vacancy. They utilised his services as and when required for. He was engaged purely on temporary and casual basis. Bank being Government under taking they have to follow the recruitment process while appointing any employee. The workman was not appointed by following recruiting process. There was no vacancy. In the absence of permanent employee they used to engage the concerned workman for sundry jobs like cleaning, dusting etc. He was engaged as and when required on casual and daily wage basis. They denied that the workman worked continuously from 22/11/1996 to 03/08/1999. They disengaged him as they were not in need of his services. It does not amount to retrenchment. There was no violation of provisions of Section 25 F of the I. D. Act. Therefore they pray that the reference be dismissed with cost.

4. The second party workman vide his rejoinder Ex-10 denied the contents in the written statement and reiterated the recitals in statement of claim.

5. On the basis of pleadings, my Ld. Predecessor has framed the following issues for my determination. I record my findings thereon for the reasons to follow.

Sr. No.	Issues	Findings
1.	Whether it is proved that the workman Shri Deepak D. Naik Peon/Sub-staff of Mapusa Branch of Union Bank of India has completed 240 days of service continuously from 22/11/96 to 3/8/99?	Yes.
2.	Whether the action of the management of Union Bank of India in terminating the services of workman Shri Deepak D. Naik from 4/8/99 is legal and justified?	Not required to be dealt with.
3.	What relief the workman is entitled to?	As per order below.

REASONS

6. My Ld. Predecessor by his award dt. 13/01/2003 answered issue no.1 in the affirmative. However decided issue no.2 in favour of the first party management and held that their action of disengaging the workman was legal and justified. The workman challenged the award in writ petition no.425/2003. In the writ petition Hon'ble High Court found that the findings in the award that workman had worked more than 240 days with the first party is not based on the evidence on record. Therefore Hon'ble High Court quashed and set aside the findings to that effect and remanded the matter for scrutinising the material and to arrive at definite conclusion in that respect. In short as per the direction of Hon'ble High Court I am required to deal with only issue no.1.

Issue no. 1 :

7. In this respect the ld. adv. for the second party workman submitted that workman was appointed by the first party Bank as a sub staff since 22/11/1996 and was working with the Bank till he was disengaged on 03/08/1999. The workman has produced on record relevant pages of cash voucher register with list Ex-21/1, cash vouchers with list Ex-21/2 and Cash receipts with list Ex-20/4. Along with written arguments Ex-49 he has given summary of the statement of actual working days of the workman shown in Ex-20/4, Ex-21/1 & Ex-21/2. From this statement it is clear that from August 1998 to July 1999 the workman had worked for 291 days. These documents Ex-20/4, Ex-21/1 and Ex-21/2 are the documents of Bank. In

the circumstances I found that there is substance in the version of the workman that he had worked more than 240 days in a period of 12 months. Accordingly I decide this issue no.1 in the affirmative.

8. In this respect I would like to point out that, though workman had worked for more than 240 days, his services cannot be regularised as he was not appointed by following the recruitment procedure and verdict to that effect is given by Hon'ble High Court while deciding the aforesaid writ petition. However as the workman had worked for 240 days in a period of 12 months, he is well entitled to the protection under Section 25-F of the I.D. Act. In short, the workman is entitled to the notice pay and retrenchment compensation as prescribed under Section 25-F of the I.D. Act. Accordingly I partly allow the reference and proceed to pass the following order:

ORDER

(i) The reference is partly allowed with no order as to cost.

(ii) The order of termination of services of workman is found in violation to Section 25 F of the I.D. Act.

(iii) The first party is directed to pay to the workman notice pay and retrenchment compensation as prescribed under Section 25 F of the I.D. Act, 1947.

Date : 21/05/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 11 जुलाई, 2014

का.आ. 2034.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई.डी.बी. आई. बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, मुंबई के पंचाट (संदर्भ संख्या 60/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.07.2014 को प्राप्त हुआ था।

[सं. एल–12011/70/2008–आईआर(बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 11th July, 2014

S.O. 2034.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 60/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai as shown in the Annexure in the Industrial Dispute between the management of I.D.B.I. Bank and their workmen, received by the Central Government on 11/07/2014.

[No. L-12011/70/2008-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K. B. KATAKE, B.A., LL.M., Presiding Officer

REFERENCE NO.CGIT-2/60 of 2008

EMPLOYERS IN RELATION TO THE MANAGEMENT OF I.D.B.I. BANK

The Deputy General Manager (ER)
IDBI Bank
IDBI Tower, WTC Complex
Cuffe Parade
Mumbai-400005.

AND

THEIR WORKMEN
The General Secretary
IDBI Karmachari Sangh
Vishwakarma Sabhagruha
Central Plaza
Rajwada
Satara-415 002.

APPEARANCES :

FOR THE EMPLOYER : Mr. R.S. Pai, Advocate.

FOR THE WORKMEN: Mr. S.V. Sahasrabudhe, Advocate.

Mumbai, dated the 28th May, 2014

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.L-12011/70/2008-IR (B-II) dated 17.09.2008 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of IDBI Ltd., Mumbai by transferring Organising Secretary of the Union, Shri Sunil Bhagwat is justified? What relief the union is entitled to?"

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party union filed their statement of claim at Ex-4. According to the second party union the erstwhile United Western Bank Ltd. was amalgamated in the first party Bank. They have absorbed the staff members of the United Western Bank. Shri Sunil R. Bhagwat is Organising Secretary of erstwhile United Western Bank. After amalgamation the name of the union was changed as IDBI Karmachari Sangh. The post of Organising Secretary is key post in the union. Shri Sunil Bhagwat was working at Zonal Office, Mumbai.

He was assigned with various roles, duties and tasks pertaining to the Trade Union operating in IDBI Bank Ltd. As per the Shastry Award the Bank was not supposed to transfer such office bearers. Inspite of that they transferred Shri Sunil Bhagwat from Zonal Office, Mumbai to Head Office Premises Department, Mumbai by the order dated 03/11/2007. Again they have transferred Shri Bhagwat to Aundh Branch at Pune. The said order of transfer of Organising Secretary was with mala fide intention and to victimize the office bearer of the union.

3. Therefore union raised the dispute before ALC (C). However dispute could not be resolved and ALC (C) sent failure report to the Central Labour Ministry. On his report the Central Labour Ministry sent the reference to this Tribunal. The union herein prays that, action of the management transferring Shri Bhagwat be declared unjust and illegal. They also pray for declaration that management has indulged in unfair labour practice and also prays that first party be directed to bring the Organising Secretary of the union to his original place of posting. They also pray that the period of transfer of Shri S. R. Bhagwat to Aundh Pune Branch be treated as on deputation and they be directed to pay TA/DA to Shri Bhagwat for the above period and also prays for exemplary cost from the management for unfair labour practice.

4. The first party management resisted the statement of claim vide their written statement at Ex-11. According to them there is no clarity of status of second party union. There are many complaints against Shri Bhagwat from his current branch about his poor leave record and his attitude towards the office work. The second party union has no locus-standi to raise industrial dispute on the issue. Neither it is collective bargaining agent nor representative body of all workmen of the first party Bank. The transfer is prerogative pertaining to routine transfer thus dispute be dismissed summarily. The transfer was purely an administrative decision taken by the management. The amalgamation took place on 30/9/2006 and it provides for a maximum period of three years during which the employees are required to be migrated to the terms and conditions of service of the employees of the transferee Bank. There was no mala fide intention in effecting the transfer of Mr. Bhagwat. After amalgamation it was decided to close certain branches of erstwhile United Western Bank and shift some to new location as per the business plan of the first party. Shri Bhagwat happens to be one of the many employees so relocated. According to the first party the present dispute is raised by the second party with malafied intentions and ulterior motives to pressurize and coerce the management to further its unreasonable demands in furtherance of personal gains. Therefore they pray that reference be dismissed with cost.

5. The second party filed their rejoinder at Ex-13 denying the contents in the written statement and reiterating the submissions made in the statement of claim.

6. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the decision of first party in transferring Shri Sunil Bhagwat, Secretary of the Union is just and legal?	No.
2.	What order?	As per order below.

REASONS

Issue No. 1 :

7. In this respect the ld. adv. for the first party submitted that the transfer of the workman was in routine course and it was routine administrative action of the management. According to him the workman though of erstwhile United Western Bank after amalgamation he became the employee of the first party and was bound by the rules and regulations of the Bank. The ld. adv. submitted that the transfer is one of the service conditions and the same cannot be challenged by an employee. In support of his argument ld. adv. resorted to Apex Court ruling in Kendriya Vidhyalaya Sanghatan V/s. Damodar Prasad Pandey and ors. 2004 (Supp) SCR 578. In Para 4 of the judgment the Hon'ble Court observed that:

> "Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by mala fide or infraction of any prescribed norms of principles governing the transfer."

8. The ld. adv. also cited few more rulings, they are (1) State of Madhya Pradesh & Ors V/s. Shri S.S. Kourav & Ors. 1995 SCC (3) 270, (2) Shri Abani Kanta Ray V/s. State of Orissa & ors 1995 SCC (Supp-4) 169, (3) Pearlite Liners (P) Ltd. V/s. Manorama Shirshe 2004 3 SCC 172 wherein Hon'ble Court observed that :

> "A transfer order is normal incidence of service unless there is a term to the contrary in the contract of service."

9. The ld. adv. for the first party also cited Bombay High Court ruling in VIP Industries Ltd. Satara V/s. Maharashtra Kamgar Karmachari Sanghatana, Satara & Anr 2008 (3) CLR 22 wherein Hon'ble Court in respect of transfer, observed that :

> "If transferability is condition of service, it cannot be faulted except on grounds of mala fides or there being statutory violation."

10. In short, transfer is service condition and generally the order of transfer need not be interfered with unless it is effected with malafied intention or there being Statutory violation. However in the case at hand facts are quite different. In this respect I would like to point out that the fact is not disputed that the workman herein is the office bearer and is Organizing Secretary of the union. In this respect I would like to refer clause 535 of Shastry Award. It provides :

> "1. Every registered bank employees' union from time to time shall furnish the bank with the names of the President, Vice-President and the Secretaries of the Union;
>
> 2. Except in very special cases, whenever the transfer of any of the above mentioned officers is contemplated, at least five clear working days' notice should be put up on the notice boards of the bank of such contemplated action;
>
> 3. Any representations written or oral made by the union shall be considered by the Bank;
>
> 4. If any order of transfer is ultimately made a record shall be made by the bank of such representations and the banks reasons for regarding them as inadequate; and
>
> 5. The decision shall be communicated to the union as well as to the employee concern."

11. As per Shastry Award the President, Vice President and Secretaries of the union are protected workmen and before transfer at least five clear days notice is required to be given and after hearing their representation if transfer is ultimately made, Bank is required to communicate the reasons as inadequate made in the representation. The decision shall be communicated to the union as well as the employee concerned. In the case at hand no such notice was given to Mr. Bhagwat before effecting his transfer. As the workman Shri Sunil Bhagwat is the Organising Secretary of the Union, his transfer in the light of Clause 535 of Shastry Award cannot be said just and legal. Thus it needs no further discussion to arrive me at the conclusion that the transfer of the workman was not justified and legal. The ratios laid down in the above rulings are not applicable to the set of facts of the present case as the workmen therein were not protected workmen.

12. In this respect further I would like to point out that even after completion of period of three years till this date he was not transferred to Mumbai. Thus direction is required to be given to the first party to cancel his transfer to Aundh, Pune. Accordingly I decide this issue no. 1 in the negative and proceed to pass the following order:

ORDER

(i) The action of first party transferring Mr. Sunil Bhagwat to Aundh Branch, Pune from Head office at Mumbai is declared not justified and legal.

(ii) The first party is directed to cancel his transfer and post him at Mumbai.

Date: 28.05.2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 11 जुलाई, 2014

का.आ. 2035.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विशाखापटनम पोर्ट ट्रस्ट प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 33/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.07.2014 को प्राप्त हुआ था।

[सं. एल–34011/02/2011–आईआर(बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 11th July, 2014

S.O. 2035.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of the Visakhapatnam Port Trust and their workmen, received by the Central Government on 11/07/2014.

[No. L-34011/02/2011-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT : SMT. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 19th day of June, 2014

INDUSTRIAL DISPUTE No. 33/2012

Between :

The General Secretary,
National Port Trust Employees Union,
D.No.31-33-103/1, Opp.to Sree Leela Mahal,
Cinema Hall, Dabagardens,
Visakhapatnam – 530020.

….Petitioner

AND

The Chairman,
Visakhapatnam Port Trust,
Port Area,
Visakhapatnam – 530 001.

....Respondent

APPEARANCES :

For the Petitioner : M/s. G. Vidya Sagar, K. Udaya Sri & P. Sudheer Rao, Advocates

For the Respondent : M/s. Alluri Krishnam Raju & N. Santosh Reddy, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-34011/2/2011-IR(B-II) dated 9.7.2012 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Visakhapatnam Port Trust and their workman. The reference is :

SCHEDULE

"Whether the action of the management of Visakhapatnam Port Trust to stop the supply of multi-vitamin tablets which was introduced by them 25 years back, to the workers of VPT without any notice, is legal and justified? What relief the concerned workmen are entitled to?"

The reference is numbered in this Tribunal as I.D. No. 33/2012 and notices were issued to the parties concerned.

2. Case stands posted for filing of Claim Statement and documents by Petitioner.

3. At this stage, Petitioner called absent. No representation. Claim statement not filed. Inspite of giving fair opportunity again and again Petitioner is not taking any interest in the proceedings and he has not made any claim. Hence, taking that there is no claim to be made for the Petitioner, 'Nil' Award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 19th day of June, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 11 जुलाई, 2014

का.आ. 2036.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 27/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 11.07.2014 को प्राप्त हुआ था।

[सं. एल–12011/273/2003–आईआर(बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 11th July, 2014

S.O. 2036.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 11/07/2014.

[No. L-12011/273/2003-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/27/04

Presiding Officer : SHRI R.B.PATLE

General Secretary,
Daily Wages Bank Employees Association,
Hardev Niwas, 9, Sanwer Road,
Ujjain ...Workman/Union

Versus

Regional Manager,
Central Bank of India,
Regional Office,
6/3, Race Course Road,
Indore ...Management

AWARD

Passed on this 15th day of May, 2014

1. As per letter dated 8-3-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/273/2003-IR(B-II). The dispute under reference relates to:

" Whether the action of the management of Regional Manager, Central Bank of India, Indore in terminating the services of Shri Rajesh Kalyane in the year 1993-94 and not regularizing him in the bank is justified? If not, what relief the workman is entitled for?"

2. After receiving reference, notices issued to the parties. Ist party workman submitted statement of claim at Pages 2/1 to 2/6. Case of Ist party is that there was settlement between Bank Management and Federation of Employees Union on 24-12-99. As per said settlement temporary employees working for 90 days during 1-1-82 to 24-12-90. The temporary employee working for 90 days from 1-1-82 to 31-12-86 and such employees working for 60 days form 1-1-1987 to 24-12-90 were eligible for permanent appointment. Such employees passing Written Test would be placed as per seniority in the list. This remain in force till it is exhausted. Workman submits that he had worked at Siaganj Branch NBO regional office Indore 60 days every year from 1990 to 1994. That he was called for Written Test on 9-3-13. He was declared successful. He belong to SC Category. Vide letter dated 29-6-93, he was informed that he had passed Written Test. He was interviewed on 12-7-93. The select list was published, his name was at Sl.No. 2. As per letter dated 24-11-95, he was informed about his selection. Ist party workman further submits that despite of his selection in Written Test and interview, he was not given appointment as peon. That as per letter dated 28-6-02 report was called by ALC, Bhopal. In the matter of appointment of other candidates Manoj Likhar, workman and Pankan Bundela. Report was submitted by Labour Officer on 6-4-02. As per letter dated 17-7-03, General Manager found that Ist party workman was selected and the list was still existing. Workman further submits that he is eligible for appointment as permanent peon. His services were discontinued in violation of Section 25-F, G, N of I.D. Act. On such ground, workman prays for appointment as per seniority. He also prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 5/1 to 5/4. IInd party submits that Union is not competent to represent workman as the Union has no 50% membership of the employees. IInd party admits that certificate dated 20-9-93 , Para-3.2 employees whose name were sponsored through Employment Exchange and working for 90 days from 82 to 86, 60 days from 87 to December 90 were eligible to be considered for permanent appointment. It is submitted that such employees were entitled to be considered for appointment and not eligible for direct appointment. All other adverse contentions of workman are denied. It is submitted that workman had not completed more than 60 days working during any of the year. That only after approval is given by RBI for recruitment on the post then only the appointments can be given to the candidates in the selected list. On such ground, IInd party prays for rejection of claim.

4. Ist party workman filed rejoinder at Pages 14/1 to 14/2 reiterating his contentions in statement of claim that he was selected in the Written Test and oral interview.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Regional Manager, Central Bank of India, Indore in terminating the services of Shri Rajesh Kalyane in the year 1993-94 and not regularizing him in the bank is justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. As per terms of reference, legality of termination of services of Rajesh Kalyane and not regularizing him in Bank is referred for adjudication. The statement of claim submitted by workman though he has pleaded that his services were terminated in violation of Section 25-F, G, N of I.D. Act, his statement of claim is silent that he had completed 240 days continuous service during any of the year. Rather in Para-3 of his statement of claim, workman has pleaded that he had worked for 60 days during each of the year during 1990 to 1994. Pleadings of workman did not make out ground for violation of Section 25-F of I.D.Act. As his pleadings are silent that he was working for more than 240 days preceding termination of his service. as such pleadings are incomplete. That workman was covered under Section 25 (B) of I.D.Act. His statement of claim is also not disclosing the exact date of termination of his services. Workman filed affidavit of his evidence. He has shown working days 60 days in each of the year 90, 94 & 97. In his cross-examination workman says that he had passed 8th standard. He was working 60 days in 1990 at Siyarganj branch. In 1997, he worked in Head office. That he was called for interview, he was selected but appointment was not given to him. His name was at Sl.No.2 in SC Category. Management has not adduced evidence. The evidence of management is closed on 21-11-13. Documents P-3 to 18 produced by workman are admitted by IInd party. Head clerk is directed to exhibit all those documents. Document P-3 clearly provides that temporary employees working for 90 days during 1982 to 1990 are eligible to be called for interview. Document P-4 provides that candidates should write in their answer-sheets whether they belong to SC, ST category. Document P-5 shows name of Ist party workman at Sl. No. 2 of SC category in the select list. Document P-8 shows that Ist party workman was called for Written Test and interview and select list was prepared. Document P-18 shows the report submitted by Regional manager which clearly shows that the panel will remain in existence till it is exhausted. The report is clear that Written Test was conducted as per settlement

dated 24-12-90, the list was prepared after interview. Hence the report is clear that list will remain in force till it is exhausted. No reasons are found in Written Statement submitted by management why workman was not given opportunity of selection. Management has not even adduced evidence to explain why workman was not appointed after selection as per the settlement. I find absolutely no justification in denying appointment to the workman on the post of permanent peon therefore the action of the management cannot be justified. For above reasons, I record my finding in Point No.1 in Negative.

7. Point No.2 in view of my finding in Point No.1 action of the management not regularizing services of workman after his selection in Written Test and interview is not justified, question arises whether workman is entitled for reinstatement with back wages or he is entitled for regularization. As discussed above, workman has not made out that termination of his service is in violation of Section 25-F therefore there is no question of his reinstatement in service with back wages. The evidence discussed above is clear that workman had worked 60 days during each of the year and as per settlement dated 24-12-90 he was selected after Written test and interview. His name was appearing at Sl.No. 2 in ST Category. Workman was not given appointment even after his selection. Management is not explaining reasons. IInd party has not participated in reference proceeding though evidence is adduced. Workman is denied opportunity for his selection therefore the workman is entitled for appointment on the post of permanent peon in IInd party Bank. Since workman is waiting for his employment since 1994. However the evidence of the workman is absolutely silent how he is surviving all those years. Though in his affidavit of evidence, he has shown his occupation as unemployed, the circumstances shows that he must be doing some work for his survival therefore the monetary benefit cannot be allowed to the workman on that ground. Accordingly I record my finding in Point No. 2.

8. In the result, award is passed as under:-

(1) The action of the management of Regional Manager, Central Bank of India, Indore in terminating the services of Shri Rajesh Kalyane in the year 1993-94 and not regularizing him in the bank is not proper.

(2) IInd party is directed to provide employment as permanent peon as per settlement dated 24-12-90 within 30 days from the date of publication of award. It is made clear that workman is not entitled to any monetary benefits for the intervening period.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2037.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 51/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–12012/17/2004–आईआर(बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 14th July, 2014

S.O. 2037.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 51/2004) of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of the Union Bank of India and their workmen, received by the Central Government on 14.07.2014.

[No. L-12012/17/2004-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/51/2004

PRESIDING OFFICER : SHRI R. B. PATLE

Shri Harkesh Prasad Kushwaha,
S/o Shri Devideen Kushwaha,
R/o Village Boliha Post Karsara,
Satna (MP)

... Workman

Versus

Asstt. General Manager,
Union Bank of India,
Regional Office, Sirmour Chowk,
Reewan (MP)

... Management

AWARD

Passed on this 2nd day of May 2014

1. As per letter dated 31-5-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12012/17/2004-IR(B-II). The dispute under reference relates to:

" Whether the action of the management of Union Bank of India, Regional Office, Reewan (MP) in

terminating the services of Shri Harkesh Prasad Kushwaha from service is legal and justified? If not, to what relief is concerned workman entitled to?"

2. After receiving reference, notices were issued to parties, workman submitted statement of claim at Page 2/1 to 2/5. Case of Ist party workman is that he was working with IInd party from 1977 to June- 2003. He has obtained status of permanent employee. IInd party instead of according status of permanent employee to him, discontinued his services. His services were discontinued orally. Order of termination in writing is not issued to him and his services are terminated without notice. He completed more than 240 days continuous service preceding his termination. He was engaged as sweeper. His services are terminated without paying retrenchment compensation in violation of Section 25-F of I.D. Act. IInd party did not consider seniority. He was not called for selection for permanent post. IInd party has committed unfair labour practice. His services are terminated in violation of Section 25-F, N of I.D. Act. On such grounds, workman prays for his reinstatement with back wages.

3. IInd party filed Written statement at Page 5/1 to 5/11: IInd party submits that workman was never in employment of the Bank. There was no question of termination of service. The reference is not tenable. The Bank is established under banking Company's (Acquisition and Transfer of Undertakings)act, 1970. The Bank carries business at different branches of Zonal Office, central office and Regional office. The regulations for recruitment of Class-IV employees are formulated by Govt. of India. Only After adopting procedure for recruitment on the basis of names sponsored by Employment Exchange, candidates are appointed. The Branch Manager shall no power to appoint sub staff without approval from Central Office. The workman by raising this dispute wants employment in the back through back door entry, his name was not sponsored through Employment Exchange. he was never appointed as messenger/peon. Workman not completed 240 days service. The duties of peons are carried by permanent messengers in the branches. Workman was engaged for cleaning work for 1-2 hours. It doesnot give right as employee of the Bank. Workman was paid wages agreed to him. IInd party reiterates that workman had not completed 240 days service, defence was not appointed. Workman desires back door entry in the Bank. It is denied that services of workman are not terminated violating Section 25-F of I.D. Act. IInd party submits that non- engagement of workman is not covered under Section 2(oo) of I.D. Act. IInd party prays for rejection of claim.

4. Workman filed rejoinder at Page 7/1 to 7/3. The contentions in statement of claim are reiterated in the rejoinder in support of their claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below.-

(i)	Whether the action of the management of Union Bank of India, Regional Office, Reewan (MP) in terminating the services of Shri Harkesh Prasad Kushwaha from service is legal and justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order

REASONS

6. Workman is challenging termination of his service for violation of Section 25-F, N of I.D. Act. IInd party denied his claim filing Written Statement. Workman filed affidavit of his evidence. He has stated that in 1996, names were called from Employment Exchange, names of two persons as well as name of workman was sent from Employment Exchange office but no action was taken. Again 1997, his name was sent from Employment Exchange office as request of IInd party for appomtment of regular post. That he was working in IInd party form May 97 till June 2003 without break. His services are terminated without notice in violation of law. That after termination of his service, one Ganga Prasad Singh is engaged in his place at Satna branch. He has stated that his services are terminated by way of victimization. In his cross-examination, workman says in 1996, he was of about 18 years of age. There were 4 employees in branch including Branch Manager, Head cashier and Daftry. Sweeper was also working at branch. He was working 1 hour morning and 1 hour evening. Again said that he was working whole day in branch. He was paid Rs. 13, 15 per day. The wages were increased to Rs. 25 per day. Documents 7110 to 7116 are prepared in his handwriting. The appointment letter was not given to him. regular pay was not paid to him by Bank. In Cross-examination of workman, no question is asked to workman that he was not continuously working from May 96 to May 2003. The evidence of workman on the point of continuous working is not challenged in cross-examination. In his further cross-examination, workman says that he produced documents about his working in Bank form 1997 to 2003. His appointment was as part time sweeper. Appointment letter was not given to him. his name was sent through Employment Exchange. His present age was 38 years on date of recording evidence i.e. on 7-10-10. Before appointment, he was not interviewed. Document Exhibit W-l shows that Dy. General Manager had sent letter to workman in reply to his letter dated 22-4-96. That the appointment were made after name sponsored through

Employment Exchange. his request could not be considered. He should keep contact with Employment Exchange office. In Exhibit W-2- Branch Manager had sent letter to Regional office applications of workman for permanent appointment. It finds reference that name of workman was received through Employment Exchange office.

7. Management filed affidavit of evidence of witness Shri Abdul Sayeed Mohammad, Branch Manager. Management's witness says workman was not employee of the Bank. He is not covered as workman under I.D. Act. His services were never terminated. That workman was not appointed following recruitment rules on the basis of names sponsored through Employment Exchange. applicant's name was not called for interview in recruitment process. His services where utilized as part time sweeper for 1-2 hours. His services were utilized for sweepmg, cleanmg of branch premises. Workmg for 1-2 hours does not entitle workman to claim employee of the Bank. In his cross-examination, management's witness says certificate dated 17- 11-99 does not bear his signature while he was Branch Manager at Karsara Branch. Workman was doing cleaning work for 30-40 minutes. He denies that his name was sponsored through Employment Exchange. he was working as Branch Manager at Karsara from 1-8-98 to 4-8-2000. During that period, part time sweeper was not available. He claims ignorance whether permanent post of PTs was sanctioned. workman Harkesh had not submitted application for part time/permanent post of sweeper. He claims ignorance whether his name was recommended to Regional/Zonal office for the post of part time sweeper. He claims ignorance whether notice of termination was issued to workman, whether retrenchment compensation was not paid to him.

8. The evidence of workman is supported by documents Exhibit W-l , W-2. As per Exhibit W-2, name of workman was sponsored through Employment Exchange. IInd party has not produced any documents about working days of workman, payment of wages. Management's witness Anil Kumar Pujara also supported management that the workman had not completed 240 days continuous service. The appointments are made following recruitment process, name of workman was not sponsored through Employment Exchange. In his cross-examination above witness of management admitted documents exhibit W-1, W-2, other documents referred to him were denied. No documents produced about Ist party workman working on part time basis. Only his affidavit is filed on the point. That engagement of workman on contract was oral. No agreement in writing was executed. Workman was not paid compensation. Termination notice was not issued to him. witness of management says that verifying record, he cannot say the period of working as part time sweeper to workman. He claims ignorance whether name of workman was sponsored through Employment Exchange, that documents are not produced by management, learned counsel for Ist party Pranay Choubey submits that adverse inference shall be drawn against management in support of his argument. Learned counsel relies on ratio held in Case of R. M.Yellatti versus Asstt. Executive Engineer reported by Apex Court. After dealing with the evidence and ratio relied in different cases, their Lordship held provisions of Evidence Act may presume or may not presume that If a party despite possession of the best evidence had not produced the same, it would have one against his contentions. The matter however would be different where inference despite direction by a Court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of the facts involved in the lis. Their Lordship further observed in present case we are of the view that workman has stepped in the witness box and his case that he had worked for 240 days in a given year was supported by the certificate (Ex. W-I). In the circumstances, the division bench of the High court had erred in interfering with the concurrent findings of fact.

In present case in cross-examination of workman, his evidence was not challenged about his continuous working from 1997 to 2003.

9. IInd party has not produced documents about payment vouchers or the evidence about working days of workman. Shri Choubey also relies on ratio held in Central Bank of India versus S.Satyan and others in JT 1996(7) 181. The ratio held in the case relies to that retrenchment under Chapter V-A is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and therefore there is no reason to restrict application of Section 25- H therein only to one category of retrenched workmen. We are therefore unable to accept the contention of Shri Pai that a restricted meaning should be given to the word retrenchment in Section 25-H. this contention is therefore rejected. In present case, pleadings and evidence of workman about failure of IInd party to provide him re-employment or some other person is re-employed in his place are not clearly stated, therefore the ratio cannot be applied to present case at hand. Considering evidence discussed above, the evidence of workman is cogent that he was continuously working form May 1997 to June 2003, his services are terminated without notice, retrenchment compensation is not paid to him. As such termination of workman is in violation of Section 25-F(a,b) of I.D. Act. Therefore I record my finding in Point No.1 in Negative.

10. In view of my finding in Pont No.1, services of workman are terminated in violation of Section 25-F, question arises whether workmen is entitled for reinstatement with back wages. Workman in his cross-

examination says that he was not interviewed, he was engaged on daily wages. The appointment of workman was not against any vacant post. He was working as part time employee from May 97 to June 2003. Considering period of his working and nature of his employment on part time basis, reinstatement of workman would not be appropriate. In my considered view, compensation Rs. 50,000 would be appropriate relief. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under.-

(1) The action of the management of Union Bank of India, Regional Office, Reewan (MP) in terminating the services of Shri Harkesh Prasad Kushwaha from service is not legal and proper.

(2) IInd party is directed to pay compensation Rs.50,000/- to the workman. Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2038.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 39/1987) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–12012/137/1986–आईआर(बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 14th July, 2014

S.O. 2038.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/1987) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of the Bank of India and their workman, received by the Central Government on 14.07.2014.

[No. L-12012/137/1986-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, JABALPUR

NO. CGIT/LC/R/39/87

Presiding Officer : SHRI R. B. PATLE

Shri A. K. Jhawar, 26,
Sitlmata Ki Gali,
Opp. Maheshwari,
Dharamshala, Ramganj,
Khandwa (MP)

... Workman

Versus

Regional Manager,
Bank of India,
Khandwa Region,
Khandwa.

...Management

AWARD

Passed on this 2 day of May, 2014

1. As per letter dated 16-4-87 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/137/86-IR(B-II). The dispute under reference relates to:

> " Whether the action of the management of Bank of India, Khaigaon branch in dismissing Shri Arvind Kumar Jhawar, Agricultural assistant, Ahmedpur Branch w.e.f. 11-2-84 is justified? If not, to what relief the workman is entitled and from what date?"

2. After receiving reference, notices were issued to the parties. In present matter, enquiry conducted against workman was found legal by my predecessor as per order dated 1-1-1991. The award was passed by my predecessor on 6-3-92 in favour of management. The award was challenged by workman in Writ petition No. 1786/94. Writ petition was decided on 20-4-06. The award was set-aside and the matter is remanded back. Management was given opportunity to adduce evidence on the point of misconduct. That order dated 1-1-91 and award dated 6-3-92 were quashed. When the matter was restored, it was noticed that the record was weeded out. As per order sheet 18-7-2011, the parties were directed to file copies of statement of claim and documents. Copy of statement of claim is not produced. Written Statement is produced on record. Copy of rejoinder is also produced on record. The contentions of parties are available as narrated by passing order dated 6-3-92.

3. Case of Ist party workman was that he was working as Agricultural Assistant with the management and he was dismissed from service w.e.f. 11-2-84 by management of Bank of India, Khargaon Branch. The chargesheet was issued to workman alleging misconduct on 12-9-83,

13-9-83, 12-1-84. It was submitted that workman received medical treatment of Psycho-Neurosis and was treated by Dr. V. G. Dhodapkar, Suptd. Mental Hospital, Indore. His mental condition was deteriorated and was admitted in Choithram Hospital, Indore under Supervision of Dr. J. W. Sabhaney workman was then taken to H. D. Gandhi Memorial Hospital, Bombay for treatment. He received treatment from Dr. V. N. Vahia from 16-10-84 to 12-11-84. That workman was not aware of misconduct alleged against him in the chargesheet. That he was informed by his parents about the alleged misconduct. That he had not received notice of enquiry, he had not written letters, he was not aware of the findings of Enquiry Officer. That Enquiry Officer was biased. The findings of Enquiry Officer were perverse. He had not committed riotous behavior in the month of September 1983. That exparte enquiry was conducted. He also denied incident dated 12-1-1984 assaulting Branch Manager for putting iron chain around his neck. That enquiries were simultaneously conducted. Enquiry was not legal. The findings are perverse. On such grounds, workman prayed for reinstatement.

4. Management filed Written Statement at Page 8 to 11. IInd party submitted that workman joined service in Bank on 24-1-77. He was posted at Branch. On his request, he was transferred to Amedpur Khaigaon Branch. He resumed duty in said branch on 1-7-1981. That in September 1983, workman resorted to riotous and disorderly behavior in premises of the Bank. He assaulted Manager threatening to cut into pieces. Chargesheet was issued to him on 24-9-83 setting out the details. It is alleged that vide letter dated 26-11-83, 12-12-83, 10-1-84, Enquiry Officer was informed that workman will not participate in enquiry. Enquiry was conducted exparte.

5. On 12-1-84, it is alleged that workman conducted serious act of riotous behavior. He assaulted the Manager by putting iron chain around his neck and tried to pull it away. As such chargesheet was issued. Enquiry was conducted. After receiving report of Enquiry Officer, charges were proved and punishment was imposed. That punishment is legal. The contentions of workman that he was suffering from mental disability have been denied. IInd party prays for rejection of the claim.

6. Rejoinder was filed by workman at Page 12 to 14 reiterating his contentions in statement of claim. That enquiry was conducted without following proper procedure, he was suffering from mental illness. He had no knowledge about misconduct alleged and findings of Enqurry Officer.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Bank of India, Khaigaon branch in dismissing Shri Arvind Kumar Jhawar, Agricultural assistant, Ahmedpur Branch w.e.f. 11-2-84 is justified?	In Affirmative
(ii)	If not, what relief the workman entitled to?"	Relief prayed by workman is is rejected.

REASONS

8. As stated above, my predecessor vide order dated 1-1-91 found enquiry conducted against workman as legal. The final award was passed on 6-3-92. Award was passed in favour of management. Said award was challenged by workman filing Writ Petition No. 1786/1994. The order on preliminary issue and award passed by my predecessor are set-aside. Management has been given opportunity to adduce evidence to prove misconduct.

9. IInd party management filed evidence by way of affidavit of Albert Lakra, R.C.Mahadik, Nandan Kulkarni, Harsh Vardhan Dixit, M.V.Virulikar, Rohni Kumar Pandey & R.K.Pandey. All witnesses of the management have supported management that Ist party workman was reading newspaper in office. He had abused and assaulted Branch Manager Mr. Shivdasani. In IInd incident, workman had held neck of Shivdas holding iron chain and tried to kill him. The evidence in cross-examination Albert Lakra says that he was working as Cash-cum-Account clerk, he was sitting on chair next to chair of Mr. Jhawar. He was not knowing what discussion had taken place between Jhawar and Branch Manager. The incident occurred in a hall, size of hall is 20x12 ft. Manager left branch office. He was going to police. He claims ignorance whether incident was reported to Police. On say of Manager Shri Shivdasani, he had given evidence. Witness R. C. Mahadik was not cross-examined as coulsel for workman remained absent and failed to cross-examine. Witness Nandan in his cross-examination says personally he did not see chargesheet issued to workman. He did not remember strength of staff working in Ahmedpur branch. He did not recollect the size of the branch office. There was cabin of cashier, Manager and counter. The distance between Manager cabin and place of sitting of Jhawar was 10 ft. On day of incident, he was sitting in Manager's cabin. When Manager came out of his cabin, he also came out. The evidence of both witnesses is not shattered about place of incident.

10. Mr. Harsh Vardhan Dixit in his cross-examination says Branch office was about 1000 sq. ft. The distance between him and Jhawar was about 6-7 ft. it was rural bank. At the time of incident, there was no rush of customers. The bicycles kept outside the branch but there was no cycle stand approved by branch. He claims ignorance whether on day of incident around 11 AM,

Branch Manager Shivdasani and Mr. Jhawar went towards cycle stand. The evidence of witness abut occurrence of incident assault on 13-9-83 or Branch manager is not shattered. Witness Rohini Kumar Pandey in his cross-examination says in 1983, 11 persons were working in Ahmedpur branch. Mr. Jhawar was working as Agriculture Assistant sitting beyond two seats that him. Prior to assault by chair, Mr. Jhawar was reading news paper. Manager objected to it. At that time Mr. Jhawar said there were no customers and he can read newspaper. Jhawar got angry and assaulted him. The evidence of witness about assault of Manager is not shattered. Witness R.K.Pandey in his cross-examination says that prior to said incident, bycycle of Jhawar fell over motor cycle. Branch Manager Shivdasani had told Mr. Jhawar to keep his cycle properly so that it should not fell. Jhawar was sitting beyond two seat beyond him. He was at his seat. Mr. Jhawar left his seat and went to place of incident where Manager was sitting. Witness Kadva Atoot also supported the charge. In his cross-examination he says he does not know what is written in his affidavit.

11. In domestic enquiry, it is not required to prove charge beyond reasonable doubt. The evidence discussed above is supporting the allegations of misconduct committed by the workman. The evidence is cogent that workman assaulted Branch Manager with chair as well as pulled him by Iron chain at the time of IInd incident. Such acts on part of workman is serious misconduct. If employee assaults Branch Manager, the punishment of dismissal of service imposed against him cannot be said illegal. For above reasons, I record my finding in Point No.l in Affirmative.

12. In the result, award is passed as under:-

(1) The action of the management of Bank of India, Khaigaon branch in dismissing Shri Arvind Kumar Jhawar, Agricultural assistant, Ahmedpur Branch w.e.f. 11-2-84 is proper and legal.

(2) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2039.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 169/1992) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–12012/119/1992–आईआर(बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 14th July, 2014

S.O. 2039.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 169/1992) of the Central Government Industrial Tribunal/Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of the Union Bank of India and their workmen, received by the Central Government on 14.07.2014.

[No. L-12012/119/1992-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/169/92

Presiding Officer : SHRI R. B. PATLE

Smt. Nandini Naidu,
LR of Shri Arun Naidu,
Qr. No. 70, Napier Town,
Jabalpur ...Workman

Versus

Regional Manager,
Union Bank of India,
Regional Office,
Russel Chowk Crossing,
Jabalur ...Management

AWARD

Passed on this 2nd day of April 2014

1. As per letter dated 30-7-92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-12012/119/92-IR(B-II). The dispute under reference relates to:

> " Whether the claim of Shri Arun Naidu that he was engaged by the Union Bank of India for driving Bank's car in connection with official work from 15-3-83 to 31-12-91 is correct? If so, whether termination of his services w.e.f. 31-12-91 is justified? what relief, if any is the workman entitled to?"

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by Union at Page 2/1 to 2/2. Case of Ist party workman is that workman Arun Naidu was engaged by the Bank on post of Driver w.e.f. 15-3-83. He was continuously working without complaints. The services of workman were dismissed from 31-12-91. No chargesheet was issued to him, any enquiry was not conducted against workman. Workman was called for interview in 1987 for regular appointment as Driver. The result was not declared. Workman had acquired status of permanent employee covered under Section 25-B of

I.D. Act. Termination of services of workman was without notice or pay in lieu of notice. The services were terminated as per oral order dated 31-12-91. Junior employees were made permanent. It is submitted that the termination amount to illegal retrenchment. On such grounds Union prays for appropriate. reliefs.

3. IInd party filed Written Statement at Page 3/1 to 3/8. Claim of Union is opposed. Ilnd party management submits that Shri Anil Kumar was never employed as Driver in the Bank. He was personal driver appointed by successive Regional Managers namely Shri M.C.Narula, A.C.Duggal, J.Jayasingh and S.P.Dubey. That the terms of reference is vague, devoid of merit. The Govt. of India without applying its mind made the reference. There was no employer- employee relationship therefore reference is not tenable. It is reiterated that workman was never employed as Driver by the IInd party Bank he was engaged as personal driver by Regional Managers. IInd party submits that practice prevalent in Banking industry for allotting cars to executives and permitting them to occupy personal drivers. In most of the nationalized banks, there is scheme for allotment of Bank cars to the executives. The mere fact that car is allotted by Bank to the executive doesnot mean that personal driver appointed to drive the car can gain employment in the bank. That Shri Arun Kumar Naidu was not employee of the bank. Workman is not covered under Section 2(s) of LD.Act. the bank has no control over the employees engaged by Regional Manager as they are personal servants. Bank has no control over his working hours, remunerations paid to the workman. Bank has recruitment rules for following selection process. Workman was not appointed after following selection process by the Bank. The Bank did not terminate his services. On such ground, IInd party prays for rejection of his claim.

4. The workman Arun Naidu died during pendency of the reference. His LR Nandini Naidu is substituted on record.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the claim of Shri Arun Kumar Naidu that he was engaged by the Union Bank of India for driving Bank's car in connection with official work from 15- 3-83 to 31-12-91 is proved?	In Negative
(ii)	Whether termination of his services w.e.f. 31-12-91 is justified?	InAffirmative
(iii)	If not, what relief the workman is entitled to?"	As per final orders

REASONS

6. The terms of reference relates to. whether deceased workman was engaged by IInd party Bank as Driver, whether termination of his service is legal? Workman died during pendency of the reference proceeding. In support of claim of deceased workman Arun Naidu, affidavit of evidence is filed by widow Nandini. She has stated that her husband was appointed by Bank as Driver from 15-3-83. He was in continuous service without break. His services were discontinued till retrenchment of his service on 31-12-91. That her husband was not given notice, compensation was not paid in lieu of notice to her husband. Certain junior employees to her husband are made permanent. The names are not stated. Her husband was not regularized. In her cross-examination, witness Nandini says she knows places where her husband was working and what kind of work he was doing. Her husband was working as Driver. He was given appointment letter, it was not produced on record. She explained that the appointment letter is produced on other case. Her husband had ppeared in Driving Test conducted by the bank. She was unable to tell whether her husband was working as Private Driver of Regional Manager. However she claimed that her husband was working as regular driver of the Bank. Salary of her husband was paid to his account. Witness has not produced copy of appointment letters or passbook of bank account of her husband. the evidence of Nandini does not show how she received personal knowledge about working of her husband in the Bank. Copy of letter dated 19-3-91 produced on record shows that Dy. General Manager of the bank had informed Shri Kankar Munjare, Member of the Parliament for regularization of service of Shri Arun Naidu, information was being collected in the matter. The zerox copies of letters produced on record. No care is taken to prove those documents. Any co-worker is not examined in the matter who had seen Arun Naidu working as employee of IInd party bank. Document Exhibit W -1 produced is copy of failure report submitted to Govt. of India. Said document cannot prove that the deceased Arun Naidu was working as employee of the Bank.

7. Management filed affidavit of evidence of Chief Manager Arun Kumar Bhole supporting contentions of management that late Arun Kumar Naidu was engaged as private driver by Regional Manager. He was not appointed by the bank. In his cross-examination, management's witness says during 1983 to 1991 he was not posted in Regional Office, Jabalpur. He was unable to say whether post of Driver was vacant in Regional Office in 1983. He was also unable to tell whether in 1987, workman was called for interview, he claims ignorance whether workman was driving official car of Regional Manager. That he had not seen logbook. The logbook record of the period is not available. The pleadings of 1st party and evidence of Nandini donot disclose vehicle Number which Arun was driving. In absence of such evidence, the application

submitted by Union dated 17-2-95 calling IInd party to produce documents, statement of pass Book No. S-323 logbook of vehicle driven by him, vehicle petrol slip etc. cannot help to claim that deceased workman was working as Driver in the Bank. Bank's passbook normally is expected in custody of deceased workman. No reason is explained how passbook of deceased workman was in the bank and its production was sought.

8. Learned counsel for 1st party Pranay Choubey relies on ratio held in case of Shri R.M.Yellatti versus Asstt. Executive Engineer. In said case their Lordship held observations that MW-1 has suppressed the material evidence before the court. The facts of the case are not comparable as the evidence adduced by workman is not cogent that her husband was working as driver of the Bank. The ratio held in the case cannot be applied. For the same reasons ratio held in case of UCO Bank and others versus CGIT, Kanpur Nagar cannot be beneficially applied. Evidence of Nandini does not disclose what was salary paid to her husband by the Bank. The evidence about working of deceased workman Arun Naidu in the Bank as Driver is cogent and reliable. Employer-employee relationship is not established. Therefore I record my finding in Point No.1 in Negative.

9. Point No. 2 does not survive. In view of my finding in Point No.1 that it is not established that late Arun Naidu was employed as Driver by the bank, there is no evidence about termination of services of Arun Naidu by the Bank therefore as the deceased workman was not employed by the Bank, there was no question of termination by the Bank. The Point does not survive. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

(l) It is not established that deceased Arun Kumar Naidu was employed as Driver by IInd party Bank.

(2) As their employer-employee relationship is not proved between Arun Naidu and Bank, the termination of his service by Bank is not proved.

(3) Workman is not entitled to relief prayed by him.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2040.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 35/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–12011/12/1998–आईआर (बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 14th July, 2014

S.O. 2040.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 14.07.2014.

[No. L-12011/12/1998-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, JABALPUR

NO. CGIT/LC/R/35/99

Presiding Officer : SHRI R. B. PATLE

Dy. General Secretary,
Union of Maharashtra Bank Employees,
Jabalpur Unit,
Hanuman Mandir Gali,
Yadav Colony, Jabalpur

...Workman/Union

Versus

Asstt. General Manager,
Bank of Maharashtra,
Industrial Relations, Central Office 1501,
Lokmangal, Shivaji Nagar,
Pune (Maharashtra)

... Management

AWARD

Passed on this 2nd day of April 2014

1. As per letter dated 18-12-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12013/12/98/IR(B-II). The dispute under reference relates to:

> " Whether the action of the management of Bank of Maharashtra in depriving the benefits of full time sub staff to Shri Tirath Singh Bisen and Shri Dilip Jain Part time Sweepers of Ashta Branch and Bhoma Branch respectively, Distt. Seoni is justified? If not, to what relief the workmen are entitled to?"

2. After receiving reference, notices were issued to the parties. However workman failed to file statement of claim. Workman was proceeded exparte on 3-8-07. When case is fixed for exparte Written Statement, workman has submitted application for withdrawal of reference. Workman submits that he has been regularized by IInd party therefore he does not desire to prosecute the reference proceeding. The application is supported by his affidavit. Counsel for management has no objection.

3. In view of the above facts, award is passed as under:-

"As workman is regularized in service as per order dated 9-9-98, the dispute between parties seized to exist. Accordingly the reference is disposed off".

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2041.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 30/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–12012/237/1999–आईआर (बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 14th July, 2014

S.O. 2041.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2000 of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of the Punjab National Bank and their workman, received by the Central Government on 14.07.2014.

[No. L-12012/237/1999-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/30/2000

Presiding Officer : SHRI R.B. PATLE

Shri Rameshchandra Soni,
S/o R.N. Soni,
Shri Krishina Bhavan,
Choudhary Colony,
Mandsour (MP)

... Workman

Versus

Regional Manager,
Punjab National Bank,
Regional office,
20, Sneh Nagar,
Indore

... Management

AWARD

Passed on this 13th day of May, 2014

1. As per letter dated 14-1-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/237/99/IR(B-II).The dispute under reference relates to:

" Whether the action of the management of Punjab National Bank in terminating the services of Shri Ramesh Chandra Soni, S/o Shri Ramnath Soni w.e.f. 9-1-99 and denial of wages appropriate to the norms laid down is justified? If not, what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/3. Case of 1st party workman is that IInd party appointed workman as part time peon from 21-2-98 in place of Shri Mahesh Kumar Soni. He was continuously working as part time peon till discontinuation of his service on 9-1-99. That 1st party workman was paid salary Rs. 440 per month less than the minimum wages. Workman submits that as per rule, he was entitled for 1/3rd salary for post of peon. His services were terminated without notice, without paying retrenchment compensation on 9-1-99. His services were terminated orally. He was not given opportunity of hearing. He was performing services satisfactorily. Termination of his service without notice and without paying retrenchment compensation is illegal. On such ground, workman prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 6/1 to 6/3. IInd party raised preliminary objection. That workman was engaged for specific period. Appointment order was not issued to him. discontinuation of his service is covered under Section 2(oo)(bb) of I.D.Act. it is not retrenchment. As per rules and regulations of the Bank, a person with education more than 4th standard cannot be appointed as part time sweeper. That workman had made false declaration that he passed 4th standard. Infact he had passed 8th standard therefore the workman was not eligible for appointment as part time Sweeper. Workman was engaged for cleaning, sweeping work on casual basis. He was paid agreed wages for his working days. Workman was engaged from 2-3-98 to 31-7-98. Thereafter he was not engaged by the IInd party. Workman was not continuously working. After death of Shri Mahesh Soni workman was engaged for cleaning work. Workman is not entitled to relief claimed by him.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Punjab — In Affirmative

	National Bank in terminating the services of Shri Ramesh Chandra Soni, S/o Shri Ramnath Soni w.e.f. 9-1-99 and denial of wages appropriate to the norms laid down is justified?	
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief claimed by him.

REASONS

5. Though workman is challenging termination of his services for violation of Section 25-F of LD.Act but he was not paid-retrenchment compensation, his services were orally terminated. Workman failed to adduce evidence. Evidence of workman is closed on 1-7-2013. Management also failed to adduce any evidence. As such both parties failed to participate in the reference proceeding. Thus claim of workman is not supported by evidence. Therefore I record my finding in Point No.l in Affirmative.

6. In the result, award is passed as under:-

(1) The action of the management of Punjab National Bank in terminating the services of Shri Ramesh Chandra Soni, S/o Shri Ramnath Soni w.e.f. 9-1-99 and denial of wages appropriate to the norms laid down is legal and proper.

(2) Relief prayed by workman is rejected.

7. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2042.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, धनबाद के पंचाट (संदर्भ संख्या 42/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–12012/36/2011–आईआर(बी–II)]

रवि कुमार, अनुभाग अधिकारी

New Delhi, the 14th July, 2014

S.O. 2042.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 42/2012) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of Union Bank of India and their workmen, received by the Central Government on 14.07.2014.

[No. L-12012/36/2011-IR(B-II)]

RAVI KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.l), DHANBAD

IN THE MATTER OF I.D. U/S (2A)(i) (2) OF I.D. AMENDMENT ACT 2010

I.D. Case No. 1/2013

Santosh Kumar Pandey
S/o Late Pramod Prasad Pandey
C/O Uttam Kumar Pandey
Moh- Raja para, Kalitalla
P.O+ P.S+ Dist - Pakur

...Applicant

Vs.

Dy General Manager
Union Bank of India,
Regional Office Manju shree Tower,
Ranchi, 834001

...Opp. Party

AND

Reference: No. 42 of 2012

IN THE MATTER OF REFERENCE U/S 10 (1)(D) (2A) OF I.D. ACT, 1947

Parties: Employers in relation to the management of Union Bank of India, Ranchi

And

Their workman

Present:-Sri Ranjan Kumar Saran,
Presiding officer

APPEARANCES:

For the Employers : None

For the workman : Sri B. Prasad, Rep.

State : Jharkhand Industry: Banking

Dated 28/04/2014

AWARD

By Order No.L-12012/36/2011-IR (B-II), dated 09/07/2012, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub -section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal.

SCHEDULE

"Whether the action of the management of Union Bank of India In terminating the service of Shri Santosh Kumar Pandey w.e.f 01.08.2010 is legal

and justified ? Whether the demand of the workman for regularisation of his service is just and proper? What relief the concerned workman is entitled to?"

2. One I.D. case of Santosh Kumar pandey Vs Union Bank of India is registered in CGIT No.2 as I.D. 1/2011. But in the meantime the same case is registered in this Tribunal vide Ministry's order No. L-.12012/36/2011 IR (B-II) dated 09.07.2012 as Reference 42 of 2012. Thereafter the I.D. case of CGIT No.2 is transferred in this Tribunal and registered as I.D. 1 of 2013 therefore Now I.D. 1 of 2013 is merged with Reference 42 of 2012.

4. The Reference case is received from the Ministry of Labour on 30.07.2012. After notice both parties appeared, Sponsoring Union files a petition for merger of I.D. 1 of 13 with Ref. 42/12 and prays that the reference case should proceed in which stage the I.D. case is received in this Tribunal. Thereafter both case heard analogously.

5. The short point involved in this case is that the workman was working as messenger under the Union Bank management, on In 04/10/2009 He worked continuously till 31.07.2010 from 9 AM til16 PM. i.e. for 285 days.

6. When he prayed for regularization his job he was terminated on 01.08.2010. without any prior notice.

7. In spite of valid postal registerd notice, the management neither appeared nor filed counter claim statement. Considering the bank vouchers payment to workman and his unchallenged testimony there is no reason to believed his case.

8. Considering the facts and circumstance of this case, I hold that the action of the management of Union Bank of India In terminating the service of Shri Santosh Kumar Pandey w.e.f 01.08.2010 is not legal and justified, Accordingly it is ordered to reinstate him in his post on the prevalent scale of pay as temporary worker.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2043.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जेट एअरवेज इण्डिया प्राईवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 05 of 2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.08.2014 को प्राप्त हुआ था।

[सं. एल–11012/1/2008–आईआर(सीएम–I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th July, 2014

S.O. 2043.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 05/2008) of the Central Government Industrial Tribunal/Labour Court, Kolkata as shown in the Annexure in the Industrial Dispute between the management of M/s. Jet Airways (India) Pvt. Ltd., and their workmen, which was received by the Central Government on 14.07.2014.

[No. L-11012/1/2008-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 05 of 2008

Parties : Employers in relation to the management of Jet Airways(India) Pvt. Ltd., Kolkata Airport.

AND

Their workman

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the Management : Mr. S.K. Sharma, Ld. Advocate

On behalf of the Workman : None.

State: West Bengal Industry : Airlines.

Dated: 19th May, 2014.

AWARD

By Order No. L-11012/1/2008-IR(CM-I) dated 21.01.2008 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Jet Airways (India) Pvt. Ltd. Kolkata in dismissing the service of Sh. Moshidul Biswas, Loader-cum-cleaner, w.e.f. 18.2.2004 is justified and legal? If not, to what relief is the concerned workman is entitled?"

2. When the case is taken up today for hearing, none appears on behalf of the workman though the management is represented by its learned counsel. It appears from the record that the workman is absent since 20.01.2014, i.e., for four consecutive dates. From the above conduct of the workman it may reasonably be presumed that the workman is not at all interested to proceed with the case further. Perhaps the workman at present has got no grievance against the management.

3. In view of the above, instant reference case is disposed of by passing a "No Dispute Award".

Kolkata,
Dated, the 19th May, 2014.

JUSTICE DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2044.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयर इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 31 of 2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–11012/12/2006–आईआर(सीएम–I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th July, 2014

S.O. 2044.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the M/s. Air India and their workman, received by the Central Government on 14.07.2014.

[No. L-11012/12/2006-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL - CUM - LABOUR COURT, CHENNAI

Thursday, the 5th June, 2014

Present: K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 31/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Air India and their workman)

BETWEEN

The Secretary
Chennai Airport Contract Workers Union
No. 13, 1st State, Balaji Nagar Anakaputhur,
Chennai-600070 : 1st Party/Petitioner Union

AND

1. The Senior Manager
Air India, Chennai Airport
Chennai-600006 : 2nd Party/1st Respondent

2. M/s Katchiamman Electricals
C/o Air India, Chennai Airport Chennai-600027 : 2nd Party/2nd Respondent

Appearance: .

For the 1st Party/Petitioner Union : Set Ex-Parte

For the 2nd Party/1st & 2nd Respondent : Set Ex-Parte

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-11012/12/2006-IR(C-I) dated 26.03.2014 referred the following Industrial Dispute to this Tribunal for adjudication. The Schedule mentioned in that order is:

"Whether services of 7 (seven contract workers (as per annexure) working under M/s Kamatchiamman Electricals at Chennai Airport can be regularized by the Management of Air India? To what relief the concerned workers are entitled to?"

2.On receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 31/2014 and issued notices to both sides.

3. Though the petitioner was served with notice, he has not appeared on the date of first hearing. Though the case was posted to another date for appearance of the petitioner, the petitioner still failed to enter appearance. The First Respondent also was absent, though served with notice. The petitioner seems to be not interested in pursuing the matter.

The reference is answered against the petitioner. (Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 5th June, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioner : None
For the 2nd Party/1st & 2nd Party Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
	Nil	

On the Respondent's side

Ex. No.	Date	Description
	Nil	

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2045.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंगापुर एयरलाईन्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 42 of 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–11012/10/2014–आईआर (सीएम–I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 14th July, 2014

S.O. 2045.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the M/s. Singhapore Airlines Ltd., and their workmen, received by the Central Government on 14.07.2014.

[No. L-11012/10/2014-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 27th June, 2014

Present: K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 42/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of M/s Singapore Airlines Ltd. and their workman)

BETWEEN

The Singapore Airlines Limited Staff & Officers Union 12, Visweswarapuram Street Mylapore Chennai-600004 : 1st Party/Petitioner

AND

The Managing Director M/s Singapore Airlines Ltd. West Minister, 108, Dr. Radhakrishnan Salai Mylapore Chennai-600074 : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : M/s BFS Legal, Advocates

For the 2nd Party/ Respondent : M/s Fox Mandal & Associates, Advocates

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-11012/10/2014 (IR(CM-I) dated 22.04.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of M/s. Singapore Airlines Ltd. in respect of non-payment of cost of living adjustment benefits to the members of the Union for the period from 2009 to 2013 is justified? To what relief the workman are entitled to?

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID No. 42/2014 and issued notices to both sides. Both sides have entered appearance through their counsel.

3. The parties have settled their dispute and have entered into a Memorandum of Settlement on 31.05.2014. The parties now seek an award on the basis of the Memorandum of Settlement. The counsel on both sides have endorsed agreeing for an award on the basis of the Memorandum of Settlement. Accordingly, an award is passed in terms of the Memorandum of Settlement filed by the parties. The Memorandum of Settlement will form part of the award.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 27th June, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : None

For the 2nd Party/ Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Description
	N/A	

SINGAPORE AIRLINES LTD.

MEMORANDUM OF SETTLEMENT

NAMES OF PARTIES : 1. SINGAPORE AIRLINES LIMITED.
THE WESTMINISTER, 1ST FLOOR 108 DR: RADHAKRISHNAN SALAI MYLAPCRE CHENNAI-600 004

2. SINGAPORE AIRLINES LTD. STAFF & OFFICERS UNION 12, VISWESWARAPURAM STREET MYLAPORE CHENNAI-600 004

REPRESENTING THE EMPLOYER 1. MR. SEAH CHEE CHIAN SINGAPORE AIRLINES LTD. CHENNAI

REPRESENTING THE EMPLOYEES 2. MR. P. S. SELVAKUMARAN GENERAL SECRETARY SINGAPORE AIRLINES STAFF & OFFICERS UNION CHENNAI

SHORT RECITAL

That Singapore Airlines Limited (hereinafter referred to as "the Company") received the Charters of Demands dated 03 June 2010 from Singapore Airlines Staff & Officers Union Chennai (hereinafter referred to as "the Association") for and on behalf its members, the employees of Singapore Airlines Limited and Singapore Airlines Cargo Pvt. Ltd. The Company, after making a detailed study of the said demands, invited the Association for negotiations. After holding negotiations on several occasions on the said Charters of Demands, the Company and the Association have arrived at an amicable settlement on the following terms and conditions :-

1. PERIOD OF AGREEMENT

1.1 This Agreement shall come into effect on 01 April 2010 and remain in force till 31 March2015.

2. GENERAL CONDITIONS OF SERVICE, SALARY, ALLOWANCES AND OTHER BENEFITS

2.1 The general conditions of service, salary and allowances, and other benefits shall be set out in Parts One and Two of the Agreement.

PART ONE

GENERAL TERMS AND CONDITIONS OF SERVICE

1. EXCLUSIVE SERVICE

1.1 An employee shall not, without the prior written permission of the Company, be engaged in any outside business or be employed in any capacity for any period by any person, government department, statutory board, firm, company or organisation other than the Company.

1.2 If an employee's family member(s) is engaged in any business which has dealings with the Company or any of it's subsidiaries that could have the effect of putting the employee in a position of conflict of interest in the discharge of his duties towards the Company, he must inform the Company in writing as soon as possible.

2. PUBLICATIONS, INTERVIEWS, BROADCASTS, ETC.

2.1 The consent of the Company must be obtained before any employee may;

2.1.1 Publish, or cause to be published or submit for publication any article, book, letter or photograph;

2.1.2 Give any interview or disclose any information for publication;

2.1.3 Broadcast or appear in television programmes;

2.1.4 Deliver any lecture or speech;

2.1.5 Exhibit or cause to be exhibited any cinematograph film; or any matter which concerns his duties or the business of the Company.

2.2 In the case of publication under clauses 2.1.1 to 2.1.5 not concerned with the Company, no mention may be made by the employee of his title or position in the Company, or his connection with the Company.

3 PRIVILEGE TRAVEL

3.1 Employees may apply for privilege travel on the Company services in accordance with the Company regulations in force from time to time.

4 UNIFORM

4.1 Employees who are required to wear uniform during duty hours will do so.

4.2 Uniform will be issued according to the Company's Uniform Manual and will remain the property of the Company.

4.3 Employees are responsible for keeping their uniform clean, presentable and in good condition.

4.4 Uniform shall not be worn when staff are off duty. Staff may, however, wear the uniform while travelling between their home and their place of duty and vice versa.

4.5 Employees leaving the services of the Company must return all items of uniform or pay the value of the unexpired life of any article which may have

been lost. Such items may be deducted from the final payments due on termination of employment.

5. PROBATIONARY PERIOD

5.1 The period of probation will be six months subject to extension by the Company at its sole discretion for a period of further three months. The total period of probation shall not exceed nine months.

6. NOTICE FOR TERMINATION OF EMPLOYMENT

6.1 Termination of employment may be effected by either the Company or the employee in the following manner:

6.1.1 During probation:

(i) within the first three months of employment: without notice;

(ii) after the first three months of employment: 14 days notice in writing or payment of 14 days salary in lieu of notice; and

6.1.2 After confirmation:

(I) one month's notice in writing or by the payment of one month's salary in lieu of notice.

7. MISCONDUCT/PUNISHMENT/DISMISSAL

7.1 Any of the following acts or omissions on the part of any employee shall amount to misconduct;

7.1.1 wilful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of the superior;

7.1.2 going on illegal strike or abetting, inciting, instigating or acting in furtherance thereof;

7.1.3 wilful slowing down in performance of work or abetment or instigation thereof:

7.1.4 theft, fraud or dishonesty in connection with the Company's business or property;

7.1.5 taking or giving bribes or any illegal gratification;

7.1.6 habitual absence without leave or absence without leave for more than 10 consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation;

7.1.7 late attendance on not less than four occasions in a month;

7.1.8 habitual breach of any law applicable to the Company or any rules made there under;

7.1.9 collection without the permission of the Company of any money within the premises of the Company except sanctioned by any law for the time being in force;

7.1.10 engaging in trade within the premises of the Company;

7.1.11 drunkenness, riotous, disorderly or indecent behaviour in the Company premises;

7.1.12 commission of any Act subversive to discipline or good behaviour in the Company premises;

7.1.13 habitual neglect of work or gross or habitual negligence;

7.1.14 habitual breach of any rules or instructions for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the Company premises;

7.1.15 habitual commission of any Act or omission for which a fine may be imposed under Payment of Wages Act 1936.

7.1.16 canvassing for Union membership or the collection of Union dues within the Company premises, except in accordance with any law or with the permission of the Company;

7.1.17 wilful damage to any Company property;

7.1.18 holding meetings in the Company premises, without the prior permission of the Company or except in accordance with any law for the time being in force;

7.1.19 disclosing to any unauthorised person any information in regard to the process of the Company which may come to the possession of the employee in the course of his work;

7.1.20 gambling within the Company premises;

7.1.21 smoking or spitting in the Company premises where it is prohibited by the Company;

7.1.22 failure to observe safety instruction notified by the Company or interference with any safety device or equipment installed by the Company.

7.1.23 distributing or exhibiting within the Company premises handbills, pamphlets and such other things or causing to be displayed by means of signs or writing or other visible representation on any matter without prior sanction of the company;

7.1.24 refusal to accept a charge sheet, order or other communication served in accordance with the Standing Orders; and

7.1.25 unauthorised possession of any lethal weapon in the Company premises.

Explanation: No act of misconduct, which is committed on less than three occasions within the space of one year, shall be treated as habitual.

7.2 An employee guilty of misconduct may be:

7.2.1 warned or censured; or

7.2.2 fined. subject to and in accordance with the provision of the Payment of Wages Act 1936; or

7.2.3 suspended by an order in writing from the Company for a period not exceeding four days; or

7.2.4 dismissed without notice.

7.3 No order under 7.2.3 shall be made unless the employee concerned has been informed in writing of the allegod misconduct or given an opportunity to explain the circumstances alleged against him.

7.4 No order or dismissal under 7.2.4 shall be made except holding an enquiry against the employee concerned in respect of the alleged misconduct in the manner set out in clause 7.5.

7.5 An employee against whom an enquiry is proposed to be held shall be given a charge sheet. clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to defend himself or shall be permitted to be defended by an employee working in the same department as himself or by any office bearer of the Association. Except for reasons to be recorded in writing by the Enquiry Officer, the employee shall be permitted to produce witness in his defence and cross examine any witness on whose evidence the charges rest. A concise summary of the evidence from both sides and the employee's pleas shall be recorded.

7.6 All proceedings of the enquiry shall be conducted in English.

7.7 The enquiry shall be completed within a period of 3 months. Provided that the period of 3 months may for reasons to be recorded In writing, be extended to such further period as may be deemed necessary by the Enquiry Officer.

7.8 An employee against whom any action is proposed to be taken under clauses 7.2.2 to 7.2.4 may be suspended pending the enquiry or for the period, if any, allowed to him for giving his explanation. The order of suspension may take effect immediately on its communication to the employee.

7.8.1 Subject to the provision of the Payment of Wages-Act 1936, an employee who is placed under suspension shall, curing the period of suspension, be paid a subsistence allowance at the following rates: .

(i) for the first ninety days of the suspension period, the employee will be paid on ½ of the basic salary and allowances. However, the Shift Allowance and Uniform Laundry Allowance will not be paid;

(ii) If the enquiry gets prolonged and in case the employee continues to be under suspension for the period exceeding 90 days, he will be paid ¾ basic pay and allowances. However, the Shift Allowance and Uniform Laundry Allowance will not be paid.

(iii) If the enquiry is not completed within a period of 180 days the employee will be paid full basic pay and allowances. However, Shift Allowance and the Uniform Laundry Allowance will not be paid.

7.8.2 Provided that where the findings of the enquiry officer show that such enquiry is prolonged beyond a period of 90 days, or as the case be 180 days, for reasons directly attributable to the employee, the subsistence allowance to be paid per month shall be for the period exceeding 90 days, or as the case may be 180 days, be reduced to ½ basic pay and allowances.

7.8.3 If, as a result of the enquiry held or explanations tendered, it is decided not to take any action against the employee under Clause 7.2 the employee shall be deemed to have been on duty and shall be entitled to full wages minus such subsistence allowance as he may already have drawn and to all other privileges for the full period of suspension.

7.8.4 The payment of subsistence allowance under Clause 7.8.1 shall be subject to the employee concerned not taking up any employment during the period of subsistence.

7.9 In awarding the punishment under this standing order, the Company shall take into account the gravity of the misconduct, previous record if any of the employee, and any other extenuating or aggravating circumstances that may exist.

7.10 If an employee refuses to accept a charge sheet order or other communication served in accordance with the Standing Order and provided that he has been asked to accept the charge sheet in the presence of at least 2 witnesses, he shall be told verbally the time and place at which the enquiry into his alleged misconduct is to be held, and if he refuses or fails to attend at that time, the enquiry shall be conducted ex-parte and the punishment awarded shall take into account the misconduct under Standing Order 22 thus committed.

7.11 An employee may be warned, censured or fined for any of the following acts and omissions:

7.11.1 absence without leave without sufficient cause;

7.11.2 late attendance;

7.11.3 negligence in performance of duties;

7.11.4 neglect of work;

7.11.5 absence without leave or without sufficient cause from the appointed place of work;

7.11.6 entering or leaving, or attempting to enter or leave the Company premises except by a gate or entrance appointed:

7.11.7 committing a nuisance on the Company premises:

7.11.8 breach of any rule or instruction for maintenance or running of any department. Provided that no employee shall be fined, except in accordance with the provisions of the Payment of Wages Act 1936, where the provisions of the said Act are applicable to him.

8. WORKING HOURS

8.1 The normal hours of work will not exceed thirty-eight hours and forty-five minutes per week excluding meal breaks. These hours of work will be distributed over five days a week with two days in each week being days off. It shall be the absolute discretion of the Company to specify the exact working hours, depending upon operational requirements. In the case of employees working on shift basis, the length of each working week may vary according to the particular shift roster, but on an average; each employee will be required to complete 38 hours and 45 minutes over the course of the complete shift cycle.

8.2 No employee shall be eligible to receive wages if he fails to report for duty for any reason other than approved leave or paid holidays.

8.3 An employee will work in excess of the normal working hours when required to do so by the Company subject to the payment of Overtime for the extended hours worked.

8.4 Overtime will be calculated at twice the basic hourly rate of work. The hourly rate will be calculated as follows:

$$\frac{\text{Basic Salary per month x 12 mooths}}{\text{52 weeks x 38 hours and 45 minutes}}$$

8.5 Employees will be required to enter their starting and finishing time of work, on each occasion, in an attendance register kept for this purpose. Time in excess of normal working hours has to be certified in the register as being required for company duty by the departmental nead concerned.

8.6 Employees working in excess of half an hour from their rostered time off, shall be entitled to overtime payment from the rostered time off.

9 WORKING ON A WEEKLY DAY OFF

9.1 If an employee is required to work on his scheduled day off, he will be given a day off in lieu within 21 days. If this is not possible, he will be paid overtime at twice the basic hourly rate subject to a minimum guaranteed four hours.

10 WORKING ON PUBLIC/NATIONAL HOLIDAY FALLING ON A OFF DAY

10.1 If an employee is required to work on his scheduled off day which is also a Public/National holiday for the station, he will be given two days off In lieu within twenty-one days. If this is not possible. he will be paid overtime at twice the basic hourly rate for that day and be given a day off. Overtime will be paid subject to a minimum guaranteed four hours.

11 WORKING ON PUBLIC/NATIONAL HOLIDAY

11.1 If an employee is required to work on a Public/ National holiday he will be given a day off in lieu within twenty one days. If this is not possible he will be paid overtime at twice the basic hourly rate, subject to a minimum guaranteed four hours.

12 ROSTERED DUTIES

12.1 The roster will be published two weeks in advance for a period of four weeks. It can, however, be changed by giving twenty-four hours notice. For operational exigencies for e.g. aircraft diversions, or return to base, no notice of change need be given.

12.2 There will be a minimum of twelve hours break between shifts. If an employee is required to report for duty before he has had this break of twelve hours, he will be entitled for overtime payment for the hours that fall short of the full break.

12.3 An employee who is required to work continuously for 17 hours or more will be paid overtime for the extended hours worked, be given a break of 12 hours and a compensatory off within 21 days.

13 PUBLIC HOLIDAYS

13.1 Employees will be granted fifteen public holidays in a calendar year. The list of public holidays will be drawn up with the Association before the commencement of the year. In case the Govemment announces any additional holidays under the Negotiable Instruments Act, employees will be granted that holiday.

14 ANNUAL LEAVE

14.1 Annual leave will be granted on the following basis and will be taken in accordance with the following regulations:

14.1.1	For employees with up to 5 years service	17 working days
14.1.2	For employees with more than 5 years service	20 working days
14.1.3	For employees with more than 15 years service	23 working days

14.2 Annual leave must be taken in the calendar year in which it is earned. Leave not utilised by the end of the calendar year will lapse unless it was not taken at the Company's request. In such cases and provided prior approval is obtained from the General Manager or State Manager, the leave may be carried forward to the following year to be cleared by 31 March.

15 CASUAL LEAVE

15.1 An employee will be entitled to paid Casual leave up to 9 days in a calendar year, but not more than 2 days at a time.

15.2 Casual leave shall be non-cumulative and no leave of any kind may be combined with Casual Leave.

15.3 Casual leave is intended to meet special or unforeseen circumstances for which provision cannot be made by exact rules.

15.4 The previous permission of the Department Head must be taken in writing before Casual leave is taken, but when this is not possible, information should be given on the telephone.

16 SICK LEAVE

16.1 An employee will be eligible for sick leave on full salary up to a maximum of 12 working days in one calendar year. Sick leave may be accumulated up to a maximum of 90 working days.

16.2 Sick leave taken for two or more working days must be supported by a certificate from the Company-appointed doctor.

17 MATERNITY LEAVE

17.1 All female employees will be entitled to maternity leave as per the provisions of Maternity Benefit Act - 1961 and the amendments made to it thereafter.

18 MEDICAL TREATMENT (DOMICILIARY)

18.1 Employees can opt for one of two schemes:

18.1.1 Scheme 1 : Full reimbursement tor the employee only, for the cost of medical treatment received from Company-appointed doctors.

18.1.2 Scheme 2 : Reimbursement, for the employee, spouse and dependent children, for the cost of medical treatment received from Company-appointed doctors subject to a maximum limit of Rs.8,500 per annum for staff, and Rs.2,500 per annum each for spouse and two dependent children

18.2 Medical treatment shall consist of consultation fees, including specialist's fees, the cost of any tests/investigations required for the diagnosis of the illness, and medicines prescribed by the doctors. This will also include the Company-appointed doctors' visiting fees.

18.3 The employee shall exercise the option once a year. Once exercised, the option cannot be changed for a period of 12 months.

18.4 The Company shall not be responsible for the payment of any expenses arising from:

18.4.1 all medical, surgical, optical and dental appliances including spectacles and eye glasses, dentures and similar appliances;

18.4.2 pregnancy, confinement or miscarriage;

18.4.3 illness or disablement arising from attempted suicide, the performance of an unlawful act, provoked assault, the use of drugs other than those prescribed by the Company's doctor;

18.4.4 treatment of medicines where these become necessary as a result of the misconduct or negligence on the part of an employee or in the case of an employee who refuses to undergo treatment as prescribed by the Company doctor.

19. DENTAL TREATMENT

19.1 Employees shall be reimbursed the cost of dental treatment which they may receive from Company-appointed dentists. This consists of consultation fees, including specialist's fees, the cost of any tests/investigations required for the diagnosis of the illness, and medicines prescribed by the dentist.

19.2 Dental treatment includes cleaning, scaling, filling, extraction, root canal treatment, gum surgery etc. It excludes capping, bridging, dentures and other dental appliances.

20. MEDICAL TREATMENT (HOSPITALISATION)

20.1 All employees are covered for hospitalisation by an insurance policy with the premium of which will be paid for by the Company. In the case of married employees, the Company will pay fifty percent of the premium for the employees' spouse and dependent children. The balance fifty percent will be paid by the employee himself.

20.2 For employees in Grades Ill, the maximum sum insured will be Rs.200,000. With effect from the next date of renewal the sum insured will increase to Rs.300,000 (subject to renewal of the policy by the insurance company).

20.3 For employees in Grades IV and V, the maximum sum insured will be Rs.250,000. With effect from the next date of renewal of the said policies the sum insured will be revised to Rs.350,000 (subject to renewal of the policy by the Insurance company).

21. PERSONAL ACCIDENT INSURANCE

21.1 All employees are covered for hospitalisation by a Personal Accident Insurance Policy, the premium of which will be paid by the Company.

21.2 The sum insured for each employee will be twice the annual salary of each employee (at the time of renewal).

22. EMPLOYEES' PROVIDENT FUND

22.1 Employees who are members of the, Employees' Provident Fund will be eligible for the benefits as per the rules of the Fund.

23. RETIREMENT

23.1 The retirement age is 58 years for both male and female employees.

PART TWO

SALARY, ALLOWANCES & OTHER SERVICE CONDITIONS

1. SALARY SCALES

1.1 Salaries for each position will be paid in accordance with the salary scales set out in Annexure 1.

2. ANNUAL INCREMENTS

2.1 Employees will be granted annual increments on 01 April each year, amounting to 4% of their basic salary as at 31 March.

3. BASIC SALARY REVISION

3.1 Employees will be granted a Cost of Living Adjsutment (COLA) for the duration of this agreement as per the table below:

Date	COLA (% of 31 March basic pay)
01 April 10	9.85
01 April 11	8.71
01 April 12	8.31
01 April 13	11.06
01 April 14	9.95

3.2 The Cost of Living Adjustment (COLA) will be based on a weighted average of CPI of 05 on-line metros (BOM, BLR. CCU, DEL & MAA), using staff strength as variable.

4. TRANSPORT SUBSIDY

Transport subsidy will be paid as per the table below:

Grade	01 April 2010		01 April 2011 onwards	
	Town	Traffic	Town	Traffic
3	3550	6250	4250	7500
4	3680	6370	4400	7640
5	3800	6500	4550	7800
5A	3900	6600	4680	7900

5. HOUSE RENT ALLOWANCE

5.1 All employees will be entitled to receive a House Rent Allowance 'amounting to 10% of their basic pay

6. SHIFT ALLOWANCE:

6.1 Employees who are rostered for shift duties will be paid a single rate Shift Allowance with effect from 01 April 2010.

6.1.1 The Shift Allowance replaces the Night Shift Allowance and the Work Through Break Allowance, which will cease to be paid from the same date.

6.2 The Shift Allowance will be paid on the following basis:

6.2.1 FY1 0/11, FY11/12 & FY12/13 : Rs.1000 per month X 11 months for each year

6.2.2 Effective 01 April 13, the Shift Allowance will increase to Rs.2,500 per month;

6.2.3 Effective 01 April 14, the Shift Allowance will increase to Rs.3,000 per month

7. UNIFORM LAUNDRY ALLOWANCE:

7.1 Effective 01 April 2010, employees who are required to wear uniforms will be paid a Uniform Laundry Allowance of Rs.700 per month towards the cost of laundering their uniforms.

7.2 Staff will not be paid the Uniform Laundry Allowance when they are on annual leave.

8. ACTING ALLOWANCE

8.1 When an employee is absent for a period exceeding 5 working days, the Company may at its discretion appoint an employee in a lower grade to act for the absent employee. The junior employee will be entitled to an Acting Allowance provided he takes over the full responsibilities and duties of the senior employee and acts for a period of at least 5 consecutive working days. The Acting Allowance payable will be 6% of the junior employee's

monthly basic salary pro-rated for the number of days applicable.

9. BONUS

9.1 Employees will be paid an annual bonus in accordance with the law.

10. GRATUITY

10.1 Gratuity will be payable to all employees as per the provisions of The Payment of Gratuity Act, 1972 and the amendments made thereafter.

11. RECOVERY OF OVERPAYMENT OF SALARY AND ALLOWANCES

11.1 In the event of excess payment of salary and allowances, owing to.

11.2 Cashier error

11.3 Error in calculation

11.4 Sick leave and annual leave taken in excess of entitlement the Company shall recover the same from the employee's future wages. However, the deduction should be effected within 01 year from the date of excess payment.

12. CHANGES IN ALLOWANCE AND BONUSES AND SUCH OTHER PAYMENTS AS REQUIRED BY LEGISLATION.

12.1 The Company agrees to make such changes to the allowances, bonuses, and such other payments as may be required by legislation.

12.2 In the event that an employee resigns from the services of the Company he will receive arrears which are due to him from the date of termination of employment, in accordance with the law.

13. EXISTING BENEFITS AND PRIVILEGES

13.1 All existing benefits, privileges, payments and allowances not covered in this Agreement in Parts One and Two shall not be changed without prior agreement with the Association in writing.

14 GENERAL

14.1 The Management shall withdraw the Writ Petition No. 22435 of 2013 filed by Singapore Airlines Limited before the High Court of Judicature at Madras where an order dated 19.08.2013 has been passed to stay the proceedings in ID No. 36 of 2013 pending before the Central Government Industrial Tribunal, Chennai and Writ Petition No. 22491 of 2013 filed by Singapore Airlines Limited before the High Court of Judicature at Madras where an order dated 19.08.2013 has been passed to stay the proceedings in ID No. 47 of 2013 pending before the Central Government Industrial Tribunal, Chennai. Subsequent to the withdrawal of the Writ Petitions mentioned above, the Association shall file the present Settlement Agreement before the Central Government Industrial Tribunal, Chennai and request CGIT to pass an award in I.D. No. 36 of 2013, I.D. No. 47 of 2013 and I.D. No. 42 of 2014 in terms of this Settlement Agreement.

14.2.1 The Union agrees not to make any other demands other than those contained herein pursuant to the Charter of Demand dated 03 June, 2010, during the tenure of this agreement. The demands which have not been settled by this settlement and contained in the Charter of Demands, are hereby withdrawn by the Union.

14.3 In the event that the Company reaches an agreement with any staff association in India on more beneficial terms, the Company undertakes to extend the same to the Association, with effect from the same date from which they become applicable.

This agreement is signed at Chennai on the 31st day of May Two Thousand and Fourteen

Manager Southern India Singapore Airlines Limited (For & on behalf of the Employer)	General Secretary Singapore Airlines Staff Officers &Union (For & on behalf of the Employees)

WITNESSES:

1. K Ravichandran

2. Mohamed Akmal

15 ANNEXURE 1

1. Salary Ranges with effect from 01 April, 2010.

Grade	Title	Salary Ranges (Ra/pm) Min	Max
1	Office Helper	14,203	35,308
2	Clerk	17,717	44,293
3	**Jr Agent/Clerk** (Customer Service, Reservations, Accounts, Sales & Marketing)	22,519	56,300
4	**Agent** (Customer Service, Reservations, Accounts, Sales & Marketing)	25,981	64,950
5	**Officer** (Customer Service, Reservations, Accounts, Sales & Marketing)	33,085	82,700

2. Salary Ranges with effect from 01 April, 2013.

Grade	Title	Salary Ranges (Ra/pm) Min	Max
3	**Jr Agent/Clerk** (Customer Service, Reservations, Accounts, Sales & Marketing)	25,000	62,500
4	**Agent** (Customer Service, Reservations, Accounts, Sales & Marketing)	33,000	82,500
5	**Officer** (Customer Service, Reservations, Accounts, Sales & Marketing)	40,000	100,000
5A	**Sr. Officer** (Customer Service, Reservations, Accounts, Sales & Marketing)	45,000	112,500

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2046.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 1129/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–23012/26/1998–आईआर(सीएम–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 14th July, 2014

S.O. 2046.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1129/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of M/s. BBMB, Dhulkote, and their workmen, received by the Central Government on 14.07.2014.

[No. L-23012/26/1998-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT II, CHANDIGARH

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 1129/2005

Registered on 22.9.2005

Sh. Jugal Kishore, Village Sultanpur, Post Office Kakru, Tehsil and District Ambala.

...Petitioner

Versus

The Executive Engineer, O&M Division BBMB, Dhulkote, District Ambala.

...Respondents

APPEARANCES:

For the workman : Sh. R.K. Singh Parmar A.R.

For the Management : Mrs. Sumanjit Kaur Adv.

AWARD

Passed on- 9.6.2014

Central Government vide Notification No. L-23012/26/98/IR(CM-II) Dated 17.2.1999, by exercising its powers under Section 10 sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the Executive Engineer, O&M Division Bhakra Beas Management Board, Dhulkote in terminating the services of Sh. Jugal Kishore S/o Sh. Chamela Ram w.e.f. 25.7.85 is just and legal? If not, to what relief is the workman entitled?"

In response to the notice, the workman submitted statement of claim pleading that he was employed by the respondent management on 1.10.1984 as Beldar in District Ambala where he worked till 31.12.1984. He was transferred to Chandigarh where he worked up to 25.7.1985 when his services were terminated illegally.

It is pleaded that he served a demand notice and the conciliation proceedings failed. The Central Government declined to make the reference to the Labour Court. It is alleged that his Authorized Representative did not include his service period from October 84 to December 84 during which he served at Ambala and only mentioned the period from 1.1.1985 to 25.7.1985. He filed Civil Writ Petition No.8990 of 1994 which was also dismissed on the ground that the workman did not furnish the list of workmen who were junior to him. Workman came to know about the names of the workman who were junior to him. He again preferred Civil Writ Petition No.4003/1997 which was also dismissed on the ground that he did not disclose the names earlier. Following were the persons who were junior to him –

Sr. No.	Name of the workman	Date of employment
1.	Sh. Joginder Singh, S/o Sh. Ram Kishan	4/85
2.	Sh. Chanda Singh S/o Sh. Jagir Singh	5/85
3.	Sh. Labh Singh, S/o Sh. Ajaib Singh	8/85
4.	Sh. Ram Lal S/o Sh. Jagir Singh	9/85
5.	Sh. Luxman Dass S/o Sh. Tau Ram	10/85
6.	Sh. Umesh Prasad S/o Maheshanand	10/85
7.	Sh. Om Prakash S/o Sh. Dewan Chand	7/87

He completed more than 240 days of service and juniors were retained in service and therefore his termination is illegal and he be reinstated in service.

Respondent management filed written reply controverting the averments and pleaded that the workman was employed as Team Mate workcharge vide offer of appointment issued vide Memo No.3198/99 dated 22.3.1985 (Annexure I) against a specific work of Mohali-Chandigarh Line. His period of service was to be extended from time to time. He joined the service on 27.3.1985 (Annexure 2) and on completion of the work, his services were terminated on 25.7.1985 after serving 10 days notice dated 15.7.1985 (Annexure 3). That he worked only for 190 days against a specific work and as such his services came to an end under Section 2(oo)(bb) of the Act.

During the pendency of the proceedings the workman died and his LR was brought on record vide order dated 12.5.2008.

Parties were given opportunity to lead its evidence.

Laxmi Devi, LR of the workman appeared in the witness box and examined Kashmiri Lal.

Laxmi Devi has stated that workman was her son and was employed by the respondent as daily wager, and then as a workcharge.

Kashmiri Lal filed his affidavit deposing therein that workman was employed as daily wager from 1.10.1984 and worked with him.

On the other hand the management examined Narender Sharma, Executive Engineer who filed his affidavit reiterating the case of the management as set out in the written statement.

I have heard Sh. R.K. Singh Parmar, AR of the workman and Mrs. Sumanjeet Kaur, counsel for the management.

It was contended by the AR of the workman that the workman continuously worked with the respondent management from 1.10.1984 to 25.7.1985 and his services were terminated without complying with the provisions of Section 25F as well as the persons junior to him whose names find mention in para 13 of the claim statement were retained in service and thus the termination of the workman was illegal and he be reinstated in service. He further argued that he moved an application for production of documents but the management failed to produce and relying on Punjab State Forest Development Nigam Limited Vs. Presiding Officer, Labour Court, Amritsar and Another reported in 2010(1) SCT 667 submitted that management was required to maintain the relevant record and if the same is not produced, adverse inference be taken. The AR of the workman also relied on The General Manager, Punjab Roadways, Tarn Taran Vs. Sardar Masih and Another reported in 2007(2)SCT 763 to submit that the services of the workman were terminated in violation of the rule of 'Last Come First Go'.

There is no dispute about the proposition of law as laid down in the said authorities. But the question is whether the workman was actually employed from 1.10.1984 to 26.3.1985 as the management admits that he joined the service on 27.3.1985 as workcharge employee. There is an affidavit of Kashmiri Lal who deposed that workman was employed as daily wager w.e.f. 1.10.1984 and worked with him. But in the absence of any documentary evidence that workman was actually employed by the respondent management the bare statement of Kashmiri Lal cannot be believed, and even so it is not clear whether Kashmiri Lal actually worked with the respondent management at the relevant time. Thus there is absolutely no evidence that workman worked with the management from 1.10.1984 onwards. When it is not proved that workman worked with the management, his service record was not to be maintained at all and if the management did not produce any such record, no adverse inference can be drawn against it.

The definite stand of the management is that the workman was initially appointed for one month against a specific work i.e. Mohali-Chandigarh Line where he joined on 27.3.1985 and on completion of the work his services were terminated on 25.7.1985 after serving a 10 days' notice as required under Clause 21(ii) of the Standing Order of the management. These facts are clear from Annexure A1 whereby an offer was given to the workman to be appointed initially for period of one month against the work of Mohali-Chandigarh Line and he submitted his joining report on 27.3.1985 (Annexure A2) and on completion of the work, he was served with a notice for termination of his services as is clear from Annexure A3. Thus the workman was appointed against a specific work i.e. workcharged employee and on completion of the work, his services were to be terminated and the case of the workman clearly falls within the ambit of Section 2(oo)(bb) and the same do

not amount to 'retrenchment' and it cannot be said that the management has violated any provisions of the Act.

According to the workman the persons whose names find mentioned in para 13 of the claim petition were junior to him but the management has taken a definite stand that the said persons were appointed on daily wages and not on workcharged basis. As stated above the workman was appointed against a specific work of Mohali-Chandigarh Line and when the work was completed, it cannot be said that any other worker was appointed there as workcharged employee. If the management has employed some persons as daily wagers at some other work, it cannot be said that there was only violation of Section 25G of the Act.

In result, it is held that the termination of the services of the workman cannot be termed as illegal and the workman is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2047.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जे. एल. एन. बी. सी. एवं एच. ए. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 89/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–42012/125/2004–आईआर(सीएम–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 14th July, 2014

S.O. 2047.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 89/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of Jawahar Lal Nehru Bhartiya Chiktisa Avom Homoeopathy Central Research Institute (Ayurveda), and their workmen, received by the Central Government on 14.07.2014.

[No. L-42012/125/2004-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT II, CHANDIGARH.

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 89/2005

Registered on 20.4.2005

Sh. Anand Prakash, S/o Sh. Girdhan Lal, H.No.778, Gali No.3, Bajwa Colony, Patiala.

...Petitioner

Versus

1. The Director, Jawahar Lal Nehru Bhartiya ChikitsaAvom Homoeopathy Anusandhan, Bhawan No.61 to 65, Opp (D) Block Institutional New Area, Janakpuri, New Delhi.
2. The Assistant Director, Central Research Institute (Ayurveda), P.B. No.83, Moti Bagh Road, Patiala.

...Respondents

APPEARANCES :

For the workman : Sh. Karam Singh A.R.

For the Management : Ex parte.

AWARD

Passed on 5.06.2014

Central Government vide Notification No. L-42012/125/2004 IR(CM-II)) Dated 30.3.2005, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether the action of the management of Jawahar Lal Nehru Bhartiya Chikitsa Avom Homoeopathy Anusandhan, New Delhi in terminating the services of Sh. Anand Prakash, Dresser w.e.f. 2.6.1987 is legal and justified? If not, to what relief the workman is entitled?"

In response to the notice the workman appeared and submitted statement of claim pleading that he was appointed as Dresser by respondent No.1 vide order dated 19.7.1987 in the pay scale of Rs.210-270 plus usual allowances and the workman joined his duties on the same day. He continuously worked up to 1.6.1987 when his services were terminated. It is pleaded that he was granted earned leave during the period he remained in service and work of Pharmacist was also taken from him. That he was getting a pay scale of a dresser. That his services were terminated without complying with the provisions of Section 25F of the Act and even the post of Pharmacist was filled after terminating his services and as such there is violation of Section 25H of the Act also. That he be reinstated in service with full back wages.

Respondent management filed written reply pleading that the workman was appointed as dresser on ad hoc basis in place of Sh. Balwant Singh who in turn was appointed to officiate as compounder against the leave vacancy of Surinder Kumar compounder who was on leave w.e.f. 4.6.1984 to 30.5.1987. When Surinder Kumar joined his duty on 1.6.1987, Sh. Balwant Singh was reverted back and the services of the workman were dispensed with. That there is no violation of Section 25F and 25H of the Act.

The management was proceeded against ex-parte vide order dated 7.9.2011.

The workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition. He has also filed the documents Annexure W1 to W6.

I have heard Sh. Karam Singh, AR of the workman.

It was argued by the AR of the workman that the workman continuously worked with the management from 19.7.1984 to 1.6.1987 when his services were abruptly terminated and in violation of the provisions of Section 25F of the Act as well as a person was appointed after terminating his services without giving him an opportunity and as such the termination of the workman is illegal and he be reinstated with full back wages.

I have considered the contention of the learned counsel.

The appointment letter dated 19.7.1984 is reproduced as follows:-

> "As Sh. Hari Kesh S/o Sh. Devki Nandan did not report for duty to the office so far. Therefore, Sh. Anand Prakash S/o Sh. Girdhar Lal, is hereby appointed as Dresser w.e.f. 19.7.1984 against the post of Sh. Balwant Singh, Dresser who has joined as Compounder against the Leave Vacancy of Sh. Surinder Kumar Sharma, Compounder till further orders in the pay scale of Rs.210-270 plus usual allowances admissible under rules."

A bare perusal of the order shows that Surinder Kumar was posted as Compounder and proceeded on leave and against his place Sh. Balwant Singh joined and in place of Balwant Singh the workman was appointed. Thus it was a leave vacancy arrangement and on the joining of the service of Sh. Surinder Kumar, Sh. Balwant Singh was reverted to his original place as Dresser and consequently the services of the workman came to an end on 1.6.1987. Section 2(oo)(bb) of the Act defines 'retrenchment' and it read as follows:-

(oo) "retrenchment means the termination by the employer of the service of the workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include –

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.

Thus the termination of service under a stipulation in that behalf do not amount to retrenchment. In the present case the workman himself admits that he was appointed in a leave arrangement and on the joining of Sh. Surinder Kumar, his services were terminated. Thus when his services were terminated under a stipulation of the appointment letter, he cannot claim the benefit of any provision of the Act.

It may also be added that the workman was not appointed by following any rules and regulations of the department and the Hon'ble Apex Court in Secretary State of Karnataka Vs. Uma Devi reported in A.I.R. 2006 S.C. 1806, observed that employees who were not appointed by observing regular procedure and rules are not entitled to regularization of their services.

Thus the workman who was appointed in a leave vacancy arrangement cannot claim that he was appointed on regular basis and he is not entitled to the protection of the provisions of the Act and it cannot be said that termination of his services are illegal and he is not entitled to any relief. The reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2048.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी.पी.डब्ल्यू. डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ

संख्या 139/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–42012/287/2003–आईआर(सीएम–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 14th July, 2014

S.O. 2048.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 139/2004) of the Central Government Industrial Tribunal/Labour Court No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Central Public Works Department, and their workmen, received by the Central Government on 14.07.2014.

[No. L-42012/287/2003-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, KARKARDOOMA, DELHI

Present : SHRI HARBANSH KUMAR SAXENA, Presenting Officer

ID No. 139/2004

Sh. Ashutosh Kumar

Versus

CPWD

AWARD

The Central Government in the Ministry of Labour vide notification No. L-42012/287/2003-IR(CM-II) dated 17.08.2004 referred the following Industrial Dispute to this tribunal for adjudication :-

> "Whether the contact between the management of CPWD and their contractor is sham and the demand of CPWD Karamchari Union for absorption / regularization of S/Shri Ashutosh Kumar, Satya Prakash and Tejpal Singh (contract labour) with the management of CPWD is legal and justified? If yes, to what relief they are entitled?"

On 03.09.2004 reference was received in this tribunal. Which was register as I.D No. 139/2004 and claimants were called upon to filed claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen/claimants filed claim statement on 20.10.2005. Wherein they stated as follows:-

1. That the workman No. was initially inducted on year 1997 and the workmen No.2 was induced on year 1993 as General Operator through the Private Contractor. Management No. 2 for discharging the job of operating for the principal Employer, Management No. 1 it is stated that ever since their appointment they have been discharging their job diligently and sincerely for the management of CPWD having been posted at Electrical Division No. 1, Nirman Bhawan, New Delhi -110001 under the Executive Engineer, Electrical i.e. Management No. 2.

2. That the nature of job discharged by both the workmen are perennial and permanent in nature and the job satisfy all the ingredients contained in Section 10 of Contract Labour (Regulation and Abolition) Act, 1970 worksuting abolition of contract labour in the said job. It is stated that the contract awarded by CPWD. In favour of contractor for carrying out perennial nature of job is bad in law and the contract itself is vague which ought to be lifted in industrial adjudication.

3. That the workmen are placed under the direct control and supervision of Principal Employer and the contractor has no role to play in day to day affairs of working of the workman. It is stated that the nature of job performed by the workmen are similar to be workmen posted on regular basis and they work as if under the Principal employer.

4. That each of the workmen, has completed 240 days in each year of working, regarding the establishment of Principal Employer to regularize them in the principal employer.

5. That the workmen through the union send a demand notice to the management requesting therein for their regularize/absorption in the establishment of the CPWD since their respective date of appointment through contractor with consequential benefits but the management has neither replied nor complied with the said notice.

6. That the workmen through their union also filed a claim before the Asstt. Labour Commissioner (Central) Curzon Road, New Delhi for intiating the conciliation proceedings regularize/ absorption in the establishment. The management was called in the conciliation proceedings and the management duly participated in the same but failed to settle the dispute and did not regularize the workmen in the establishment despite efforts made by the conciliation officer.

7. That after being satisfied that conciliation officer referred the dispute to that Hon'ble Tribunal for proper adjudication of the dispute.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may be pleased to :-

(a) Pass an award in favour of the workman and against the management directing the

management to permanently absorb/ regularized the workmen in the establishment of CPWD. Since their respective date of initial appointment through contractor with consequential benefits in the matter of pay/ emoluments and other benefits.

(b) Any other relief which this Hon'ble Tribunal may deems fit and proper in the fact and circumstances of the present case.

Against aforesaid claim Respondent No.1 CPWD filed no written statement case proceeded ex-parte against management consequent ex-parte Award on 29.12.2005 has been passed in favour of workmen and against management. Through which my Ld. Predecessor decided question of determination No. 1 in favour of workmen namely Sh. Ashutosh Kumar, Satya Prakash and Tejpal (Contract Labour) and against management.

My Ld. Predecessor replied the reference as follows:-

The contract between the management of CPWD and their contractor is sham and the demand of CPWD Karamchari Union for absorption /regularization of S/Shri Ashutosh Kumar, Satya Prakash and Sh. Tejpal (Contract Labour) with the management of CPWD is legal and justified. The management is directed to absorb the workmen within two months from the date of publication of the award.

Award is given accordingly.

Ex-parte award dated 29.12.2005 passed in favour of workmen. Which was challenged in Hon'ble High Court of Delhi by management.

On 12.12.2007 Hon'ble High Court set- aside the ex-parte award dated 29.12.2005 and remanded the case to this tribunal for decision afresh. Parties were directed to appear before tribunal. On 15.1.2008 case was taken up in this tribunal after remand. Parties were directed to appear before tribunal on 17.01.2008.

On 08.10.2008 evidence of workmen was recorded in this tribunal. Thereafter A/R for the workmen closed evidence of workmen.

On the request of parties my Ld. Predecessor also passed following order on 08.10.2008 "as per request of the parties evidence recorded in ID. No. 139/2004 be also read in the other LCA No. 55/2007".

On 11.02.2009 affidavit of management witness Sh. Himanshu Gupta has been filed copy of which supplied to Ld. A/R for the workman and 08.04.2009 was fixed for cross-examination of MW1 Sh. Himanshu Gupta but his examination-in-chief and his cross-examination could be recorded on 9.11.2010. Thereafter management closed its evidence and then this tribunal fixed 07.02.2011 for argument.

On 27.05.2013 this case taken before my Ld. Predecessor Dr. R.K. Yadav. Ms. Meenakshi Aggarwal, Ld. A/R for the management submitted that inadvertently. Management has not adduced any evidence in the case. The court has recorded evidence of the management in LCA No. 55/2007. She explains that said evidence cannot read in the present dispute. She wants time to examine to witness on behalf of management this request was not opposed by Shri B.K. Prasad. Case was adjourned to 08.07.2013 for management evidence.

On 13.11.2013 an application has been moved on behalf of management. Which was not opposed by Ld. A/R for the workmen. Hence allowed in the interest of justice. Photocopy of statement of Sh. Himanshu Gupta is introduced on record and fixed 16.12.2013 for argument.

On 03.03.2014 written arguments on behalf of workmen filed copy of which supplied to Ld. A/R for the management. Several opportunities given to Ld. A/R for management but no written arguments in reply has been filed by Ld. A/R for the management which compel this tribunal to pass order on 30.05.2014 for fixing 23.06.2014 for award. However Ld. A/R for the management has been afforded opportunity to file reply of written arguments of workmen and supply copy of aforesaid arguments to Ld. A/R for the workmen. Even then Ld. A/R for the management has not filed reply of written arguments of the workmen upto 11 am of 23.06.2014 nor orally argued although Ld. A/R for management appeared in other case.

Written arguments filed by workmen are as follows:-

1. That the Ministry of Labour, Sharm Shakti Bhavan, New Delhi vide its order No. L-42012/287/2003-IR(CM-II) dated 17.08.2004 have referred the dispute between the above parties for adjudication as per following terms and conditions:

SCHEDULE

"Whether the contract between the Management of CPWD and their contractor is sham and the demand of CPWD Karamchari Union for absorption / regularization of Shri Ashutosh Kumar, Satya Prakash and Tejpal (Contract Labour) with the management of CPWD is legal and justified? If yes, to what relief they are entitled?

2. That the Union has filed claim statement on behalf of the workmen and according to their Statement of Claim S/Shri Ashutosh Kumar was initially engaged in the year 1997 and Sh. Satya Prakash was engaged in the year 1998 as Generator Operator through the private contractor and both the workmen were operating the job of Generator Operator directly under the control of Principle employer of the management of CPWD and posted at Electrical Division-I, Nirman Bhawan, New Delhi under the Executive Engineer, Electrical, CPWD, New Delhi. That Sh. Tejpal

workman connected with the dispute left the job and not performing the duty with the management of CPWD.

3. That both the workmen were performing their duty on the work which is perennial and permanent in nature and the job satisfy all the ingredients contained in Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and the said job was abolished by the appropriate Govt. i.e. Ministry of Labour issued the notification dated 31st July, 2002 and the said notification is Exhibit WW1/1 and Exhibit MW1/W1.

4. That the Management witnesses have also admitted that he has no knowledge if any registration was required to be obtained before allowing outsourcing of workers through contractor. The cross-examination of the management MW1 is reproduced as under:

> "I am in ECDI, CPWD Division since July , 2008. It is correct that I have no personal knowledge regarding anything happening in this Division prior to my posting there. I do not dispute the copy of the notification published in the Gazette of India on 31.07.2002. The same is Ex. MW1/W1. It is correct that the workmen were operating the generators. Whatever job is done by the workman, the same has to be entered in a book called Log Book. It is correct that the JE checks the installation and thereafter the signs of log book. The workmen were not on the muster roll. However, as a general rule/policy, the mustor roll employees are paid all the dues like a regular employee except the increments. I do not dispute the correctness of the Annexures C and D filed in this court. The same are Ex. MW1/W2 and Ex. MW1/3. I have no knowledge if any registration was required to be obtained before allowing out-sourcing of workers through a contractor as this is an administrative matter and I am a technical man. I do not know if any such registration was seen at the time of engaging the contractor. The job of the contractor is known to the contractor only. He does not furnish any copy of the slip of wages paid to the workers. It is correct that a JE supervises the making of the payment by the contractor. It is wrong to suggest that the JE does nothing. The contractor should have paid the minimum wages. We have not received any complaint from the workers that they have not been paid minimum wages. It is wrong to suggest that I have deposed falsely or we are exploiting the poor workers since long time.

5. That in a cross-examination of Management witness MW1 Sh. Himanshu Gupta, it is proved that the work has been abolished including Generator Operator w.e.f 31.07.2002 by the notification of Ministry of Labour, Govt. of India who is competent to issue the notification for Abolition of Contract Labour so the workman deemed to be direct employee of management of CPWD.

6. That management witness MW1 i.e. Sh. Himanshu Gupta also admitted in his cross-examination that " it is correct that the JE checks the installation and thereafter signs the Log Book." Which is also proved that the workmen have been performing their duties directly under the control and supervision of the junior engineers of management. i.e. CPWD. It is also proved that the so called contractor is only sake and providing the duty of Cashier so the Contract is Sham and comafledge and the workmen have to be treated as direct employee of the management on this account also.

7. It is also proved that Junior Engineer of the Principal Employer/officer of CPWD maintaining the Log Book which is exhibit WW2/C (Collectively) and also identity card, entry passes have been issued by the CPWD from time to time and duly signed by AE (Assistant Engineer). Those documents were exhibit WW2/A (Collectively) and Exhibit WW2B collectively which proves that the so called contractor is nothing but the tool of the management.

8.That the Management witness also admitted that the daily rated workers getting the wages of minimum of time scale with all allowances except increment. Copy of the said Memorandum issued by the Director General (Works), CPWD are exhibit MW1/ W-2 and exhibit MW1/ W-3. So it is proved that the workmen have been performing their duties of a skilled nature of job but the management even denied the payment of Minimum of Time Scale with all allowances except increment but the regular workers in the same category have been getting regular pay scale even increments which proves that these workmen are direct employees of the management of CPWD on the account of the Contract is sham and comon fledge and also on the account of Abolition of Employment of Contract Labour in the category of Generator Operator also the workman automatically deemed to be the employee of CPWD after the judgment of Steel Authority of India and Ors. Vs. Nation Union Water Front Workers and Ors. (2001) 7 SCC.

9. That the judgment of Constitutional Bench of the Hon'ble Supreme Court of India, in the matter of Steel Authority of India and Ors. National Union Waterfront Workers and Ors. (2001) 7 SCC. The relevant paras of the judgment i.e. 125(5) and (6) settled the dispute between the principal employer and the contract labour who was employed in a camoufledge manner and treated the direct employee of the principal employer, and the same is reproduced as under:

> " 125(5) On issuance of prohibition notification under Section 10(1) of the CLRS Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract

labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contract has been interposed either on the ground of having undertaken to produce any given result for the establishment for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the service of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purposes in the light of para 6 hereunder.

"6. If the contract is found to be genuine and prohibition notification under section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall preference to the erstwhile contract labour, if otherwise found suitable and if necessary by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualification"

10. That the workmen also produce the following judgments in support of their claim:

(1) That in SAIL (2001) 7 SCC also affirm the judgment of Hon'ble Supreme Court in Hussainbhai Vs. Alath Factory Thezhilali Union (1987) II-LLJ 397 and Indian Petrochemicals Corporation Ltd. And another, Appellants Vs. Shramik Sena and others and observed in para 71 as under:

"71. By definition the term "contract labour" is a species of workmen. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principlal employer. A workman may be hired (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in connection with the work of an establishment by the principle employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer had the workman. But where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai case and in Indian Petrochemicals Corporation case etc. if the answer is in the affirmative the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour.

11.That it is a matter of record that the contractors in this case is only supplying the labour for performing the work of principal employer i.e. CPWD within their premises and as per the judgment of the Hussainbhai Calicut Vs. Alath Factory Thozhilai Union (1978) II-LLJ 397, he workmen have to be treated as the direct employees of the SAIL Relevant portion of the judgment is as under:-

"5. The true test may, with brevity be indicated once again. Where a worker or group of workers labours to produce goods or services and there goods or services are for the business of another, that other is in fact the employer. He has economic control over the workers, subsistence, skill and contained employment. If he for any reason chokes off the workers is, virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex-contract is of no consequence of factors governing employment, we discern the maked truth through draped in different perfect paper arrangement that the real employment is the management not the immediate contractor. My raid devices half hidden in fold after fold of legal form depending on the degree of concealment needed the type of industry, the local conditions and the like maybe resorted to when labour legislation casts welfare obligations on the real and employer, based on Arts 38,39,42,43 and 43 A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be mislead by the maya of legal appearances.

6. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make believe trapping of detachment from the management

cannot map the real life bond. The story may vary but the inference defies in gratuity. The liability cannot be shaken off.

7. Of course, if there is total disassociation in fact between the disowning management and the aggrieved workmen the employment is, in substance and in real-life terms by another. The management's adventitious connections cannot ripen into real employment."

12. That the management witness MW1 has himself admitted in cross-examination that both workmen have been performing their job owned by the CPWD in their premises and log book supervised by the Junior Engineer who checks the log book and installation of Generator where the workman performing his duty as Generator operator . The Hon'ble Supreme court in the matter titled M/s. Bharat Heavy Electrical Ltd. Appellant Vs. State of U.P. and another's ….. Respondents reported in 2003 LAB I.C. 2630 has held that the test of control –Gardeners engaged through contractor –Looking after lawns and parks inside factory premises, campus and residential colony of company. Their work supervised by employer of company-Attendance recorded by another employee of company –concurrent finding by Labour Court and High Court that gardeners were under direct control and supervision of company and were employees of company – Not liable to be interfered with-fact that work of gardener is not integral part of industry of company – Does not make them any the less employees of company when they were employed with company to work in its premises – Non filing of attendance register by company also supports the concurrent finding recorded by Labour Court and High Court- Termination of Services of gardeners in violation of S. 6N – Company liable to pay compensation and re-employ them. Hussainbhai V. Alath factory , 1978 Lab IC 1264 : AIR 1978 SC 1410. Neither dissented nor diluted in Steel Authority of India Vs. National Union Water Front, 2001 Lab IC 3653 AIR SCW 3574 AIR 2001 SC 3527.

In view of the above judgment the workman connected with the dispute has been performing their duty under the supervision, control and within the premises of the Management so the contract is a sham, comafledge and unjust to deny the establishment of CPWD. It is also submitted that the contract system was abolished by the Ministry of Labour during they have been performing their duties as Generator Operator and entitled to be treated direct employee of CPWD.

13.The Hon'bel Supreme Court in case of Indian Petrochemicals Corporation Ltd. Vs. Shramik Sena and others 1999 Lab. I.C. 3078 have decided that when the contract labour is treated direct employees of the management for all purposes and the regularization was granted by the court not as a matter of right of the workmen arising under any status but with a view to eradicate unfair labour practice and inequity to undo any social justice and a measure of labour welfare. Operative portion of the said judgment is reproduce as under:

" 29. In this appeal, the workmen have questioned the conditions that have been imposed by the High Court while directing regularization of the workmen. They contend that once the Court comes to the conclusion that the workmen are in fact the employees of the management , there is no occasion to impose their condition. We are unable to agree with this argument. It should be borne in mind that the initial appointments of their workmen are not in accordance with rules covering the appointments or the established policy of recruitment of the management. The said recruitment could also be in contravention of the various statutory orders including the reservation policy. Further the respondent is an instrumentality of the State and has an obligation to conform to the requirements of Article 14 and 16 of the Constitution. In spite of the same the services of the workmen are being regularized by the Court not as a matter of right of the workmen arising under any status but with a view of to eradicate unfair labour practices and in equity to undo social injustice and as a measuere of labour welfare. Therefore, it is necessary that in the process suitable guidelines or conditions be laid down at the time of courts issuing directions to concerned depending upon the facts of each case. The court has consistently followed this practice in the earlier cases of regularization and we so not find any reason to differ from the same. For the aforesaid reasons, this appeal also fails and the same is dismissed but with costs.

14. That is proved by the evidence that one of the major conditions for employment of contract labour i.e registration by the principal employer i.e. CPWD is lacking and even the contractors are not having license for supplying the contract labour, so the contract system was not the genuine contract and the workmen connected with the dispute have to be treated as direct employees of the CPWD as per the directions of the Constitution Bench of the Hon'ble Supreme Court decided in Steel Authority of India, ltd. (SAIL) case. In another case, the Hon'bel Surpeme court between the Secretary, Haryana State Electricity Board and Suresh and Others (1999-1-LLJ-1086) also held that if the so called contractor was mere name lender, who procured labour for appellant Board as broker, Board was not principal employers called contract was mere camouflage which concealed real relationship for the employer employees.

15. That the workmen also Placed the notification 31.07.2002 issued by the Ministry of Labour , Govt of India, New Delhi which prohibited the employment of contract

labour in the process/operation or work specified in the schedule and according to the said Notification, the employment of Generator Operator is also prohibited in the establishment of CPWD. The Notification is published in the Gazette of India Extraordinary Part-II, Section 3, Sub-section (ii) dated 31st July 2002. On the basis of evidence adduced by both the parties, documents placed on record and different judgment of the Hon'ble Supreme Court.

16. That the Management has admitted Annexure C and D and the same is Exhibit MW1/2 and Exhibit MW1/3 as per the said documents, even the daily rated workers have been getting their wages in the time scale with all allowances including HRA, CCA , DA, Interim Relief etc. except increment but these workman connected with the dispute denied the said payment and only paid minimum wages which Act of the Management is also unjustified ad evading the payment of equal pay paying to their casual labour/daily wages workers directly appointed by them. The Hon'ble Supreme Court titled "Rhone –Poulenc (India) Ltd. Appellant Vs. State of U.P. and others …. Respondents reported in 2000 LAB I.C. 3325 has held in para 5 and 7.

> "5 The letter of the Labour Department and the certificate issued by the Assistant Department Manager of the appellant at Bankura are in conformity with rule 25(2) (v) (a) of the Central Rules framed under Contract Labour (Regulation and Abolition) Act, 1970. These two materials clearly indicate that the respondents were doing the job, which is on par with the work of class IV employees. Further the wages to be payable to them on daily rate would be 1/26th of the monthly wages of the class IV employees. These materials were available before the High Court at the time of disposal of FMAT No. 3614 of 1992 and at the time when in interim order was granted in yet another proceeding wherein this principle was adopted. Therefore, the grievance sought to be made out by the learned counsel for the appellant that there has been no inquiry as to parity with regard to class IV employees and the wages payable to the casual workers is palpably incorrect and is not borne out by record at all.
>
> 7. Further, the High Court had given a finding that since some casual workers appointed directly by the appellant and some employed by the contractors are working in the same godown and on the same work, there could not be any scope for making any difference and to deny equal pay for equal work. Proceeding further it was stated that on the principles set out earlier with reference to the letter of the Labour Department , the wages will have to be paid regularly to the respondent at the same rate at which it was paid to the regular employees of the appellant doing identical work which has to the worked out on daily rate basis, from March 1989. The was the order that was affirmed by this Court and was not interfered with. It is difficult for us to comprehend on what basis the appellant can make any complaint now except to engage themselves in nit picking and being over ingenious in making submissions before the court. The position is, therefore , clear to the effect that this appeal is misconceived and deserves to be dismissed with costs, quantified at Rs. 10,000.

17. That as per Section 21 of Contract Labour (Regulation and Abolition) Act 1970 the wages includes the balance of wages or arrears thereof-Principle employer is statutorily responsible to ensure payment of the wages as per the law. Titled Senior Regional Manager, Food Corporation of India, Calcutta and Tulsi Das Bauri and Ors . reported 1997 –II –LLJ- 747 has held in para 5 and 6. The operative para 5 and 6 is reproduce as under:

> "5.Section 21 postulates the responsibility for payment of wages. Under sub-section (1) a contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed. Under sub-section (4) , in case the contractor fails to make payment of wages within the prescribed period or make short payment , then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deducting from any amount payable to the contractor under any contract or as a debt payable by the contractor. That liability has been prescribed under sub-section (2) thereof which says that every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.
>
> 6. Thus, it could be seen that the principal employer is statutorily responsible to ensure payment of wages as per the law. In case the contractor commits default in the payment of the wages, the principal employer is made responsible for due payment and in case such payment is made he is entitled to have it recovered by deducting from any amount payable to the contractor under the contract or as a debt payable by the contractor.

18. That it is proved that the contract is sham and comafledge and also the work of Generator Operator has been abolished by the notification of Ministry of Labour , Govt. of India dated 31.07.2002 so Sh/ Shri Ashutosh and Sh. Satyapal Prakash are entitled to be absorbed/ regularization in the establishment of the CPWD is legal and justified.

In view of the above, this Hon'ble CGIT –cum-Labour Court No. II may kindly passed the Award while treating the workman connected with the dispute of the management of CPWD and allow all the benefits including equal pay for equal work to these workmen from the date of their initial employment.

In the light of contentions made by Ld.A/R for the workmen orally as well as in written. I perused the pleadings and evidence on record and principles laid down in the cited rulings on behalf of workmen.

Moreover Ld. A/R for the management couldn't dare to reply either orally or in written the contentions of the Ld. A/R for the workman.

In these background I am of considered view that reference made to this tribunal is liable to be decided in favour of workmen and against management because the contract between the management of CPWD and their contractor is sham and the demand of CPWD Karamchari Union for absorption/ regularization of S/Shri Ashutosh Kumar, Satya Prakash and Sh. Tejpal (Contract Labour) with the management of CPWD is legal and justified. The management is directed to absorb the workmen within two months from the date of publication of the award.

The award is accordingly passed.

Dated:-23/06/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 14 जुलाई, 2014

का.आ. 2049.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी. पी. डब्ल्यू. डी. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 60/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2014 को प्राप्त हुआ था।

[सं. एल–42012/177/2004–आईआर(सीएम–II)]

बी. एम. पटनायक, डेस्क अधिकारी

New Delhi, the 14th July, 2014

S.O. 2049.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 60/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Central Public Works Department, and their workmen, received by the Central Government on 14.07.2014.

[No. L-42012/177/2004-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, KARKARDOOMA, DELHI

Present : SHRI HARBANSH KUMAR SAXENA, Presenting Officer

ID No. 60/2005

Sh. Jagdish Kumar

Versus

CPWD

AWARD

The Central Government in the Ministry of Labour vide notification No. L-42012/177/2004-IR (CM-II)dated 29.6.2005 referred the following industrial Dispute to this tribunal for the adjudication:-

> "Whether the demand of the All India CPWD Employees Union, Lodhi Colony, Enquiry Office, CPWD, New Delhi -110003 for regularization of the services of Sh. Jagdish Kumar, S/o Sh. Hari Lal, Painter in the establishment of CPWD is legal and justified? If yes, to what benefits the workman is entitled for?"

On 8/8/2005 reference was received in this tribunal. Which was register as I.D No. 60/05 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement. Wherein he stated as follows:-

1. That Sh. Jagdish Kumar (Applicant) has been working as Painter, on causal basis (on work-order) since 2.1.1989, at CGO Complex, and presently working under the Executive Engineer, 'U' Division, CPWD , New Delhi.

2. That the Applicant is covered under the definition of 'workman' as defined under section 2s of the 'Industrial Disputes Act, 1947' (hereafter Stated as 'The Act').

3. That the Executive Engineer, 'U' Division, CPWD, New Delhi is 'Employer' as per the definition under section 2g of 'The Act'.

4. That the CPWD is an 'Industry' as defined section 2j of 'The Act'.

5. That the Applicant has been employed on the work of maintenance of the buildings at CGO Complex, which is a work of permanent nature.

6. That the Applicant has not been regularized so far, though he has been working on the job of permanent

nature for the last more than thirteen years, though the workers junior to the 'Applicant' have already been regularized.

7. That the act of the 'Employer' of keeping the worker un-regularized and thereby keeping him deprive from the status and privileges of permanent workman, is exploitative, and is an act of 'Unfair Labour Practice' as mentioned in the fifth schedule of 'The Act'

8. The act of committing the 'Unfair Labour Practice' is prohibited, under section 25T of the Industrial Dispute Act, 1947 and is punishable as per the provisions of the section 25 u of the Industrial Dispute Act 1947.

9. That the Hon'ble Supreme Court of India, in its order dated 23.4.87 , in the writ-petition No. 15920/84 , filed by the All India CPWD Employees' Union, against the CPWD , expressed hope that all the workmen who have performed duty for more than six months' will be regularized.

10. That the Hon'ble Supreme Court of India in a decision in writ petitioner No. 1324 of 1990, directed the CPWD authorities to regularize 91 casual workers (petitioners). As such a few worker junior to the 'Applicant' have been regularized, thereby inflicting injustice upon the 'Applicant'.

11. That the efforts being made by the 'Employer' to show the 'Applicant' as a Contractor is an ill conceived and malafide attempt to conceal the real position, between the 'Applicant' and the Employer'.

12. That the practice of not regularizing the workman has not left any other alternative, left with the workman and the Union , but to raise dispute before this forum.

13. That the rigid stand taken by the 'Employer' in the conciliation proceedings before the 'Regional Labour Commissioner (Central) resulted in failure.

14. That the leave is sought to file the necessary documents as evidence, at the appropriate time, as and when directed by you.

15. That the 'Applicant' craves for the leave to add, delete, amend or modify this application with the prior permission from your good-self.

It is most humbly prayed that suitable direction may be issued to the 'Employer', to regularize the Applicant' from the date he joined the department , along with all the consequential benefits.

That suitable action should be taken against the Employer, for committing 'Unfair Labour Practice', besides any other action deemed fit by this Hon'ble forum.

That any other action deemed fit by your good-self, be taken against the 'Employer'.

Against claim statement management filed following written statement:-

1. That the contents of the corresponding para are wrong, misleading and misconceived and hence vehemently denied. It is vehemently denied that the applicant/workman has been working as Painter on Casual basis. It is submitted that he applicant has entered into agreement from time to time for supply of Painter as per the terms and conditions contained in the contract. Therefore, the claim of the applicant is false and frivolous and hence vehemently denied.

2. That the contents of the corresponding para are wrong, misleading and misconceived and hence vehemently denied. It is specifically denied that the applicant is workman as per the Industrial Disputes Act, 1947. It is respectfully submitted that there is no employer-employee relationship between the applicant and the respondent. In view of the submissions made in para 1 hereinabove, the contents of the corresponding para of the ID need no further reply.

3. That the contents of the corresponding para are wrong, misleading and misconceived and hence vehemently denied. It is denied that the replying respondent is employer as per Section 2(j) of the Industrial Dispute Act, 1947.

4. That the contents of the corresponding para are wrong, misleading and misconceived and hence vehemently denied. It is denied that the CPWD is an industry as per section 2(j) of Industrial Dispute Act, 1947.

5. That the contents of the corresponding para are wrong, misleading and misconceived and hence vehemently denied. It is vehemently denied that the applicant/workman has been employed on the work of maintenance of buildings at CGO Complex, which is a workman of permanent nature. It is respectfully submitted that the applicant has entered into an agreement from time to time for supply of painter as per the terms and conditions of the contract/work order. Therefore, the allegations of the applicant that he has been employed against the work of maintenance are vehemently denied. It is categorically denied that the work, as alleged, is of permanent nature.

6. That the contents of the corresponding para are wrong, misleading, frivolous, baseless, without any material fact and hence vehemently denied. It is specifically denied that the applicant has been working on this job of permanent nature for the last 13 years or workers junior to him have already been regularized. It is reiterated that the applicant has entered into agreement with the replying respondent from time to time for supply of painter as per terms and conditions of the contract/work order. The applicant is only a contractor for supply of painter as per the contract/work order and the applicant is not an employee of the replying respondent. Therefore, there is

no question of regularizing the services of the applicant. Without prejudice to the rights and contentions of the replying respondent, it is submitted that the averments of the applicant that workers junior to the him have already been regularized are wrong, misleading and without any basis. The applicant has neither disclosed the names of such persons nor provided any detail with regard to such regularization of any junior worker, as alleged. The replying respondents seek leave of this Hon'ble Tribunal to reply to such details, if any, as and when provided/disclosed by the applicant.

7. That the contents of the corresponding para are wrong, misleading and misconceived and hence vehemently denied. It is respectfully submitted that the replying respondent neither have authority nor power to regularize the contractors nor is there any provision in the departmental rules for regularization of persons like the applicant, who is a contractor. Therefore, the question of deprivation from the status and privileges of permanent workman does not arise. Hence, there is no question of exploitation and unfair trade practice as has been falsely alleged by the applicant.

9 & 10. That in reply to the averments made in the corresponding paras, it is submitted that the judgment , referred and relied by the applicant in the corresponding para of the petition, are not relevant in the facts and circumstances of the present matter. It is submitted that these judgements pertain to the case of work order on daily wages and in those cases the workmen were engaged on daily wages whereas in the instant case the applicant was given contract on certain terms and conditions , as contained therein the contract. The judgments, under reference, are out of context and not applicable in the facts and circumstances of the present case. It is pertinent to submit that the decision of the Hon'ble High Court of Delhi dated 26.5.2000, which referred to the matter to Central Advisory Contract Labour Board (CACLB) was based on the judgment of Hon'ble Supreme Court of India in the AIR India's case which has been prospectively overruled by the Hon'ble Supreme Court of India on 30.8.2001 in the case titled "Steel Authority of India Ltd. National Union Water Front Workers", reported in 2001 AIR © 3527. The relevant extract of the judgment at sub-paras (3) to (6) of para 121 of the judgment read as under:-

"Neither Section 10 of the CRLA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate government under sub section 1 of section-10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently, the Principal employer cannot be required to order absorption of the contract labour working in the concerned establishment."

It is further submitted that in view of the facts and circumstances, the applicant has got no cause of action inasmuch as he has no vested/legal right to claim regularization or any consequential benefits. Reliance is made on the law laid down by the Hon'ble Apex Court in "Secretary, State of Karnataka Vs. Uma Devi & Ors.", reported in 2006 (4)SCC 1 and further reliance is made on the law laid down in "Vivek Pousaty Vs. State of Haryana & Ors", reported in 2006 (3) SLR 786, "Rakesh Kumar & Ors. Vs. State of Punjab", reported in 2006(3) SLR 806. It is reiterated that in absence of employer-employee relation between the applicant and respondent , the applicant has no right to claim regularization or any consequential benefits. The work was got executed by express contract and it is trite law that even the Courts cannot go against the express language of the appointment letter. Reliance is made on law laid down in "Dr. (Mrs) Chanchal Goel Vs. State of Rajasthan", reported in 2003 (3) SLJ 1 (SC).

11. That the contents of the corresponding para are wrong, misleading and misconceived and hence vehemently denied. It is submitted that the respondent/ department is not concealing any facts. It is reiterated that the applicant is a contractor and he is given work on work order basis, his quotations being lowest, for which he quotes his rates through quotations. It is further submitted that no appointment letter etc. have been issued to him and hence his claim is denied and the petition under reply deserves to be dismissed.

12 to 15. That the contents of the corresponding para are wrong, except those being matter of record, are wrong, misleading and misconceived and hence vehemently denied. In view of the submissions made hereinabove, the contents of the corresponding paras need no further reply. However, it is specifically submitted that the reference is misconceived and not tenable in the eyes of law.

In view of above submissions it is prayed that ID may kindly be dismissed with costs.

Workman filed rejoinder wherein he stated as follows:-

1. The contention made in the claim application is reiterated and the contention of the 'Management' is denied. The so called contract is a sham and is simply being adopted to hoodwink the law.

2. The contention made in the claim application is reiterated and the contention of the 'Management' is denied. There is definitely employee-employer relationship between the 'Applicant' and the 'Respondent'.

3. The contention made in the claim application is reiterated and the contention of the 'Management' is denied. The 'Respondent' is the Employer' in this case, as he has employed the 'Applicant', for the work.

4. The contention made in the claim application is reiterated and the contention of the 'Management' is denied. The main function of CPWD in general is construction and maintenance of roads, buildings and bridges, and as such it is covered under the definition of 'industry' as defined under section 2j of the I.D Act, 1947.

5.The contention made in the claim application is reiterated and the contention of the 'Management' is denied. The so called contract is a sham and is simply being adopted to hoodwink the law, thereby causing unwarranted and unlawful exploitation of the 'Applicant'. The fact clearly show that the work of painter in CGO Complex is of permanent nature, that is why the 'Applicant' has been working continuously on that work for the last seventeen years.

6. The contention made in the claim application is reiterated and the contention of the 'Management' is denied. The requisite evidence for the contention will be produced at the appropriate stage.

7&8. The contention made in the claim application is reiterated and the contention of the 'Management' is denied. The 'Applicant' is a workman hence is eligible for regularization. The fact is that the so called contract is a sham and is simply being adopted to hoodwink the law. The contention of not having the power or authority , to regularize the 'Applicant' is a lame excuse, and has been placed simply to shirk away from the responsibility. Such contentions of the respondent have already been found untenable in the matter of other such workmen. In their case the respondent has already paid them the wages of the departmental employees, though they were also employed on work-order, and were being denied regular wages, by terming them contractors. Even after this to keep paying the 'Applicant' less wages is simply a case of exploitation.

9 & 10. The contention made in the claim application is reiterated and the contention of the 'Management' is denied. The 'Applicant' was employed on work- order simply to hoodwink the law. Many other workers were also employed on work-order by many a divisions including this division, fore called contract is a sham and is simply being adopted to hoodwink the law. In this situation the there definitely exists the relation of employee and employer, between the 'Applicant' and the 'Respondent' . After paying the wages of regular employee to the other such workers, the 'Respondent' cannot take any different and discriminatory stand into the matter.

11. The contention made in the claim application is reiterated and the contention of the 'Management' is denied. The reasons given in the reply are not tenable.

12 to 15. That the contentions made in the paras of the claim application are reiterated.

There is no valid reason for dismissal of the I.D , hence the submissions made in the prayer by the 'Respondent' be ignored. The contentions made in the prayer clause in the claim application is reiterated.

My Ld. predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as follows:-

> "Whether the demand of the All India CPWD Employees Union, Lodhi Colony, Enquiry Office, CPWD, New Delhi -110003 for regularization of the services of Sh. Jagdish Kumar, S/o Sh. Hari Lal, Painter in the establishment of CPWD is legal and justified? If yes, to what benefits the workman is entitled for?

Workman in support of his case filled affidavit in his evidence wherein he stated as follows:-

1. That I have been employed as 'Painter' in CPWD since 2.1.89, on 'work-order' and is fully conversant with the facts of the case.

2. That I have continuously been performing the duties in the department, and have been posted at the CGO complex, Lodi Road, New Delhi , for the work of the maintenance of the building.

3. That this work is of perennial nature and is going on continuously, though the Divisions for this work have changed many a times, yet I have been kept posted on this work. Presently this work is under the 'U' Division, CPWD.

4. That I am an employee of the department and my attendance is marked by the 'Junior Engineer' of the department in the same manner, as prescribed for other workers of the department.

5. That the fact, that I am an employee of the department, gets substantiated from the documents, in which my name has been forwarded , along with the other workers, for regularization, Photocopies of these documents are collectively attached as Annexure -1 and please be marked as W.W.1 .

6. That I am an employee of the department, also gets proved from the fact that I have been issued 'identify card' by the department and have been paid wages through hand receipt, and also have been issued the details of the working days. Photocopies of these documents are collectively attached as Annexure-2 and please be marked as W.W.-2. If I would have been a contractor then no such documents could have been issued to me.

7. That I my self do the job of painting as a 'Workman', clearly shows that the ploy of the department to term me a 'Contractor' is an effort to hoodwink the law.

8. That the department issued an Office Memorandum, dated 26-7-94, therein reiterating the ban

on employment of the workers on work-order basis. This also shows that the workers employed on work-order are not contractors, but the employees, because there is no ban on contractors. Photocopies of this document is attached as Annexure -3 and please be marked as W.W-3.

9. That despite the provisions of the laws I have been kept deprived from regularization, thereby causing me monetary loss besides other disadvantages.

10. That the Executive Engineer, 'U' Division has wrongly been denying my regularization and keeping me casual.

11. That two other workers, namely Raj and Dev Karan, working as 'Sweeper' and 'Beldar' respectively in 'U' Division , on Work-Order, in a similar and identical situation as mine, have been regularized in June-2007, by the department. Photocopies of their 'appointment-letters' are collectively attached as Annexure -4 and please be marked as W.W. -4.

12. That the documents being submitted by me are the photocopies of the official documents, and originals of these documents are with the department. In case of doubting the veracity of these documents, the 'Employer' may be directed to produce the original documents.

He was cross-examined by Ms. Pooja Wahal Advocaae, A/R for the Management:-

His Cross-examination is as follows:-

I am not in possession of any appointment letter showing my appointment in the office of the management. I came to know about the vacancy through some private person only and not from the Employment Exchange or any advertisement etc. in Newspaper or Magazine etc. One Mr. S.C. Singhal X.En. had appointed me. Mr. S.C. Singhal did not give any paper to me in writing employing me anywhere in the CPWD and it was merely a normal talk. It is incorrect to suggest that I was never given employment by the CPWD at all. It is incorrect to suggest that I used to supply painters to the CPWD Department on their request and I was practically handling like a contractor for them for supplying the painters. I used to be paid on daily wage basis cash monthly. No pay slip was ever given to me to me nor the payment was made by any cheque. I never used to sign any attendance register in the CPWD but J.E. used to mark my presence. Jagdish Kumar also used to do painting job himself and for that he used to be paid on daily wage basis. I do not know if I used to fill up the quotation for getting the work order. However, my signatures used to be obtained by the officials of the management. I never raised any objection against obtaining my signatures on papers ever. I was not subjected to medical examination or any kind of police verification by the management in connection with my job there. I did not use to get holidays. Employees used to get. I have worked in four divisions of the CPWD. I had worked last time on 17.3.2007. It is wrong to suggest that I myself was not interested to work and so I did not honour the work order given to me by CPWD on 1.4.2007. It is wrong to suggest that my claim against the management is false and baseless.

Management in support of his case filled affidavit in his evidence. Wherein he stated as follows:-

1. I the above deponent do hereby state that this Affidavit is being submitted in lieu of the previous Affidavit filed by Sh. U.S. Gauri, Executive Engineer on behalf of the department. Henceforth this deponent shall be responsible to deal with the matter concern on behalf of the Department as the previous deponent has already been transferred to another position, hence this Affidavit shall be deemed effective in place of that Affidavit.

2. I state that the deponent is working as an Executive Engineer, 'U' Division, CPWD , CGO Complex, Lodhi Road, New Delhi of the Management and as well conversant with the facts and circumstance of the case and am I am competent to swear this affidavit.

3. I state that the applicant workman has not been working as Painter on casual basis. It is submitted that the applicant has entered into agreement from time to time for supply of Painter as per terms and conditions contained in the contract.

4. I state that the applicant is not workman as per the Industrial Disputes Act, 1947. It is respectfully submitted that there is no employer-employee relationship between the applicant and respondent.

5. I state that the applicant/workman has not been employed on the work of maintenance of building at CGO Complex, which is a work of permanent nature. It is respectfully submitted that the applicant has entered into an agreement from time to time supply of Painter as per the terms and conditions of the Contract/Work Order. Therefore, the allegation of the applicant that he has been employed against the work of maintenance does not bear any truth.

6. I state that the applicant has not been working on this job of permanent nature for the last 13 years or workers junior to him have already been regularized. The applicant is only a contractor for supply of painter as per the contract/work order and the applicant is not an employee of respondent . The applicant has neither disclosed the names of such persons nor provided any detail with regard to such regularization of any junior worker.

7. I state that the respondent neither have authority nor power to regularize the Contractor nor is there any provision in the department rules for regularization of persons like the applicant, who is a contractor. Therefore, the question of deprivation from the status and privileges of permanent workman does not arise.

8. I state that neither section 10 of the CRLA Act nor any other provision in the Act, whether expressly or by

necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate government under sub-section 1 of Section 10, prohibiting employment of contract labour in any process, operation or other work in any establishment. Consequently the Principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

9. I state that the facts and circumstances, the applicant has got no cause of action in as much as he has no vested/legal right to claim regularization or any consequential benefits. I further state that in absence of employer-employee relation between the application and respondent, the application has no right to claim regularization or any consequential benefits. The work has got executed by express contract and it is trite law that even the Counts cannot go against the express language of the appointment letter.

10. I state that the applicant is a contractor and he is given work on work order basis, his quotations being lowest, for which he quotes his rates through quotations. It is further submitted that no appointment letter etc. have been issued to him.

11. I state that the claim of the workman against the management is not maintainable and is liable to be dismissed.

He was cross-examined by Mr. Vinod Kumar, A/R for the Workman:-

His Cross-examination is as follows:-

It is incorrect to suggest that Jagdish Kumar was employed as painter by the CPWD as employee of the CPWD . He was given some painting job which he was to get for the department. Jagdish Kumar workman could do the work himself or employ some other painter. In fact, he never employed anyone for doing the job and he himself only had done the job. Jagdish Kumar had been doing the painting job regularly every day since 02.01.1989. Except Jagdish Kumar, the painting job was never assigned to anyone else by the department. It is wrong to suggest that Jagdish Kumar was employed by the CPWD and I am making a false statement that he was merely a contract person for doing the job of painting. It is correct that two persons, one a sweeper and one Baildar who were working on work order basis have been regularized by the CPWD department by the order of court. It is correct that Jagdish kumar was also working on work order basis and his case is no different than the cases of above mentioned two work order persons who were regularized. It is correct that the case of Jagdish Kumar was also sent for regularization by the department vide letter dated 16.11.1994 Ex. WW1/1 but I do not know why he was not regularized. I have never heard of any complaint regarding his painting job from anyone or from the records. It is wrong to suggest that the department is wrongly and maliciously not regularizing Jagdish Kumar to which he is entitled.

Written Argument on behalf of the Applicant/Workman. Wherein he stated as follows:-

Sh. Jagdish Kumar , Painter/Applicant (hereafter stated as 'The Applicant' for the sake of brevity), was employed by the Respondent(s), as Painter, for doing the day to day work of painting in the buildings of C.G.O. Complex , Lodi Road, on 2.1.89, on 'work-order'. Since that day 'The Applicant' has performed the duty of painter, to the satisfaction of the 'Employer'. He was being paid on the basis of per day on the basis of his presence. For this purpose his attendance was marked by the concerned 'Junior Engineer' in the same manner in which the attendance of the rest of the staff was marked. In this way, though 'The Applicant' was at par with the other employees of the department , yet he was not regularized even after performing duty as casual/daily rated employee for a long period of more than fifteen years. Aggrieved by this injustice 'The Applicant' was forced to raise an ' Industrial Dispute' for getting justice. The stand of the 'Employer' during the conciliation proceedings and before this forum had been that 'The Applicant' is not an employee, rather he is a contractor , as such he cannot be regularized.

Therefore the prime issue to be settled is whether 'The Applicant is an employee or a contractor. 'The Applicant' is an employee of the department which is clear on the basis of the following facts:

1. That 'The Applicant' was employed on work-order on 2.1.1989 , for doing the maintenance work of painting , by the 'Employer' , and he continued to do this work himself for the period of nineteen years. (Evident from the record and documents of the dispute).

It is beyond all reasonable assumptions that a single contractor got on getting awarded the contract of painting of the CGO Complex building continuously for the period of nineteen years, without any break, or being replaced by some other contractor.

2. That 'The Applicant' was paid on the basis of the per day wages and has been paid accordingly, regardless of the availability of the work. His attendance was being marked by the concerned 'Junior Engineer' in the manner, prescribed for the other employees , including daily rated employees. (From the documents submitted by the 'The Applicant' along with the counter reply on 2.11.2006, it is clear that he was to be paid @ Rs. 116 per day for the period of duty for 9 A.M. to 5 P.M. , and his attendance was marked by the Junior Engineer).

This shows that there is /was no difference between 'The applicant' and other employees, particularly the daily rated employees. As the wages to such employees is paid on the basis of the days marked present. On the other hand a contractor cannot be bound to be present or leave the sight at a particular prescribed time, and cannot be paid on the basis of his presents, regardless whether any

work has been done by him or not. Other wise there will be no differences between an employee and a contractor, and so every employee could be termed a contractor. It shows that 'The Applicant' was under the control of the 'Employer' or his designated officer, for the directions of the work and also for the purpose of the attendance. This shows that there was a clear relation of employer and the employee between the two. Any denial by the 'Respondent' in this regard is totally wrong and ought to be ignored.

3. That 'The Applicant' has worked as a painter on a particular place of work ie CGO Complex Building for a continuous period of more than nineteen years, (This fact is very much clear from the documents submitted before the forum as well as the evidence tendered by the 'Employer' on 24.4.2012 during cross-examination) clearly show that it is a work of perennial nature, and there is perennial requirement of a painter. In such situation to keep 'The Applicant' un-regularized, amounts to committing 'Unfair Labour Practice', as mentioned in the 'Industrial Disputes Act'.

This shows that 'The applicant cannot be a contractor, because regardless of the availability of the work, to keep a person employed and to pay him on the basis of his presence continuously for a period of more than nineteen years can simply mean that there was/ is a relation of employer and employee between the two, and 'The Applicant' is an employee. Any contractor portrayed by the 'Employer' in this respect is a sham and has been weaved simply to by pass the provisions of the labour laws.

4. That the Employer has admitted in his cross-examination on 25.4.2012, that two other work-order employees (one sweeper and one beldar) have been regularized by them on the orders of the court. The copies of the ' Appointment-letters' appointing these two workers, namely Sh. Raju and Sh. Dev karan, as sweeper and beldar, respectively, have been submitted to this honorable forum, by ''The Applicant' as W.W.-4.

That shows that 'The Applicant' is not a contractor, but an employee, as he is at par with other workers, working on work-order in that division. If two such workers can be regularized , then 'The Applicant' is also entitled to be regularized without any discrimination . As such to discriminate this worker, by the employer is unjustified, unlawful and mala fide.

5. That 'The Applicant' is an employee of the department, also gets substantiated from the documents submitted as evidence marked as WW-1 , WW-2 and WW-3 . All these documents are the copies of the departmental letters, or certificates or Orders. It shall be pertinent to mention that the respondent have not denied any of these documents, as such these documents are valid and authentic as evidence. These documents are relevant as follows:-

(a) The documents marked as W.W.-1 are the copies of the correspondence letters between various offices, regarding the regularization of the workers working on 'work –order'. The name of 'The Applicant' also figures in the list of such workers. In one of the documents, two columns are significant : (1) The date of first entry into the department, and (2) Reason for recruitment after ban. These documents show that the names of some workers including the name of 'The Applicant' were forwarded for necessary action for the purpose of regularization.

This shows that the name of 'The Applicant' along with other workers, who were working on 'work-order' were forwarded for regularization. This fact has also been admitted by the Employer in his cross-examination on 25.4.2012, under oath. If 'The Applicant' was a contractor then how his name was sent for regularization. More over the significance of the 'date of first entry into the department ' and also the ' reason for recruitment after the ban' can pertain to and can be significant in the case of an employee only. Contractors are neither regularized in any department, nor they have got any reason for recruitment or date of first entry in the deparment.

(b) The documents marked as W.W-2 are the copies of the (1) . Photocopy of the identity card issued to 'The Applicant' by the department , (2) .Photocopy of the certificates issued to 'The Applicant' by the employer, showing the month vise number of days worked by 'The Applicant' .(3). Photocopy of the hand-receipt and wage-slip , through which payment has been made to 'The Applicant'

These documents show that 'The Applicant' is / was the employee in the department , and not a contractor, because contractors are not issued such documents.

(c) The document marked as W.W.-3 is the photocopy of an 'Office-Memorandum' dated 26th July 1994. In this order the ban has been put on recruitment of the workers on 'work-order' also.

This shows that the department was aware that the workers are being recruited on 'work-order', and they were employees of the department. That is why the department has put ban on such recruitment . If these workers were contractors then there was no justification in putting a ban on them.

6. The employer is concern of the Union Government, and ought to act as a 'model employer'. On the contrary the employer has kept 'The Applicant' and also other some workers casual for such a long period of decades, in violation of the relevant 'Labour laws' and in the guise of a sham contract. This is a simply case of exploitation of the workers. The further of such workers in such situation can very well be imagined. As after a period of performing duties for decades, they are going to get nothing, and a dark future will be looming before them. Such action and irrelevant arguments simply make mockery

of the 'labour laws' and defeat the very purpose of framing such Acts and Laws, if the Labour/Industrial workers remain deprived from getting justice, assured under the laws.

From the above paragraphs it is absolutely clear that 'The Applicant' is not a contractor , but an employee of the department, who has worked for a period of more than nineteen years as a painter, and has yet not been regularized, though the junior workers to him have been regularized.

Therefore to save 'The Applicant' from exploitation, injustice and discrimination, it is very much necessary that he should be given justice by regularizing him. The prayer is made accordingly before the honorable Court.

Written Argument on behalf of Management . Wherein it stated as follows:-

1. That the respondent is working as an Executive Engineer, 'U' Division, CPWD , CGO Complex, Lodhi Road, New Delhi of the Management and as well conversant with the facts and circumstances of the case.

2. That the applicant has not been working as Painter on casual basis. It is submitted that the applicant has entered into agreement from time to time for supply of Painter as per terms and conditions contained in the contract.

3. That the applicant is not applicant as per the Industrial Disputes Act, 1947 . It is respectfully submitted that there is no employer-employee relationship between the applicant and respondent.

4. That the applicant has not been employed on the work of maintenance of building at CGO Complex, which is a work of permanent nature. It is respectfully submitted that the applicant has entered into an agreement from time to time supply of Painter as per the terms and conditions of the Contract /Work Order. Therefore, the allegation of the application that he has been employed against the work of maintenance does not bear any truth. Moreover, no vacancy of Painter has ever been published or any interview been conducted for the post of Painter. Also other norms such as medical examination, police verification etc. have not been followed in this case.

5. That the applicant has not been working on this job of permanent nature for the last 13 years or workers junior to him have already been regularized. The applicant is only a contractor for supply of painter as per the contract/work order and the applicant is not an employee of respondent. The applicant has neither disclosed the names of such persons nor provided any detail with regard to such regularization of any junior worker.

6. That the respondent neither have authority nor power to regularized the contractor nor is there any provision in the department rules for regularization of persons like the applicant, who is a contractor. Therefore, the question of deprivation from the status and privileges of permanent workman does not arise.

7. That neither section 10 of the CRLA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate government under sub section (1) of section 10 , prohibiting employment of contract labour in any process, operation or other work in any establishment. Consequently the Principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

8. That the applicant has got no cause of action in as much as he has not vested /legal right to claim regularization or any consequential benefits. I further state that in absence of employer-employee relation between the applicant and respondent, the applicant has no right to claim regularization or any consequential benefits. The work has got executed by express contract and it is trite law that even the Counts cannot go against the express language of the appointment letter.

9. That the applicant is a contractor and he is given work on work order basis, his quotation being lowest, for which he quotes his rates through quotations. It is further submitted that no appointment letter etc. have been issued to him. It is also stated that no Service Book and Leave A/c has been maintained by the management and all the payments have been made strictly in accordance with the terms & conditions of the work order. It is clear from the available record no leave period has been sanctioned in R/o the applicant as the applicant is himself a contractor , CRs in R/o the applicant have never been filled in during the period of the contract.

10. That the management has cited the award passed in case titled as CPWD Vs. Workman in reference no. CGIT-1/25 of 2007 of Justice G.S. Sarraf Presiding Officer on 18.01.2012 by mentioning that " Management /Central Government Department and there are specific recruitment rules. If there is a vacancy it has to be advertised. The candidates have to be interviewed and medically examined and police verification has to be done before any person is appointment to the job. No such procedure was followed. The applicant /workman has admitted in his cross-examination that he never applied for any in the CPWD, the employment exchange never sent his name to the CPWD, the CPWD never interviewed him, he was never medically examined and he never furnished any details for the purpose of police verification. There is no order terminating the service of the applicant/workman w.e.f 13.9.2001 because he was never given an appointment in the department. The applicant /workman worked on the basis of contractual work orders. When the work order was not given to the applicant he came with the request for reinstatement. There never existed a relationship of employer and employee between the CPWD and the applicant and if the applicant has worked for more than 240 days on the basis of contract entered into by him with first party then certainly he cannot seek reinstatement.

11. In another matter of CPWD, DG (W) , New Delhi V/s Sh. Daya Shankar Prasad , verdict of High Court, New Delhi may also be referred to, where in the award of CGIT to reinstate the respondent in service , who was engaged on work order from time to time , has been set aside vide judgment W.P. © 12178/2006 dt. 20th September, 2012. (Copy of the judgment is enclosed.)

It is therefore, submitted before this Hon'ble Authority that as per facts stated in above paras the facts becomes crystal clear and thus applicant is not entitled as prayed for.

In the light of contentions and counter contentions I perused the questions of determination mentioned in the schedule of reference dated 29.6.2005, pleadings of claim statement, written statement and rejoinder, evidence of workman and Management , written arguments of parties, principles laid down in cited rulings, settled law on the point and relevant provisions of concerned law.

Questions of determination No.1 mentioned in schedule of reference is as follows:-

> "Whether the demand of the All India CPWD Employees Union, Lodhi Colony, Enquiry Office, CPWD, New Delhi -110003 for regularization of the services of Sh. Jagdish Kumar , S/o Sh. Hari Lal, Painter in the establishment of CPWD is legal and justified?" Which is in itself shows that burden to prove this demand mentioned in question of determination is on workman.

To prove his case mentioned in Question of Determination No.1 workman adduced his oral and documentary evidence.

In his oral evidence he filed his affidavit on 29.8.2007. Wherein he mentioned that he has been employed as 'Painter' in CPWD since 2.1.89 on 'work order'.

He has continuously been performing the duties in the department. His name has been forwarded, alongwith the other workers, for regularization.

The executive Engineer, 'U' Division has wrongly been denying his regularization and keeping him casual. Two other workers, namely Raju and Dev Karan, working as 'Sweeper' and 'Beldar' respectively in 'U' Division , on work-order, in a similar and Identical situation as him , have been regularized in June 2007, by the department. Photo copies of their 'appointment letters' are collectively attached as Annexure -4.

He also annexed Annexure-1 to show that his name alongwith the other workers was sent , to higher authority for regularization .

He also annexed with affidavit annexure No. 2 to show photocopy identity card issued by department, photocopy of receipts to show payment of wages to him and photo copies to show details of the working days.

He also annexed with affidavit photo copy of office memorandum dated 26.7.1994 as Annexure-3 to show that workman was employed on work order. He was not contractor.

He tendered his affidavit on 23.10.2008. He was cross-examined same day by Ld A/R for the management. Wherein he admitted that I had worked last time on 17.3.2007.

On the basis of his aforesaid evidence workman claimed his regularization.

In rebuttal management filed affidavit of Sh. Gulshan Sharma Executive Engineer on 15.11.2011. Who tendered his affidavit on 25.4.2012. He was cross-examined same day by Ld A/R for the workman.

On the basis of evidence on record Ld. A/R for management stressed that co-worker Raju sweeper and Dev Karan Beldar have raised their Industrial Dispute before ministry of Labour then their Dispute has been referred for adjudication to Tribunal. When reference was received in Tribunal then it was register as I.D. No. 217/ 1999. Which was decided and Award was passed on 31.08.2000 by the then P.O. of CGIT , New Delhi. Who directed to management to regularized the workman Raju and Dev Karan. On the basis of aforesaid award.

Concerned authority made co-worker Raju and Dev Karan regularized on 6.6.2007 and Jagdish Kumar worker of the I.D No. 60 of 2005 could not be regularized in want of award in favour of workman Jagdish Kumar.

Upon this Ld. A/R for workman stressed that now workman Jagdish Kumar has raised Industrial Dispute. Which is pending for adjudication before this tribunal. In which similar direction to management for regularization of workman Jagdish Kumar could be issued on the basis of parity.

So question of determination is that whether there exists parity between the workman Jagdish Kumar and co-worker Raju and Dev karan for the purpose of issuing direction to management to regularized the workman Jagdish Kumar.

For the purpose of determination of aforesaid questions evidence of workman is to be looked into.

Statement of workman Jagdish Kumar makes it crystal clear that he himself admitted on 23.10.2008 in his cross-examination that he had worked last time on 17.3.2007. So he is no more in service of management . In want of which relief of regularization to workman could not be granted. But at the same time it cannot be brushed aside as trivial fact that management has not considered the case of workman for regularization upto 17.3.2007 without any plausible reason . Hence management is liable to pay reasonable compensation to workman and workman is entitled to get reasonable Compensation.

Adopting delaying tactics deprived the workman Jagdish Kumar in getting benefits of regularization since 12.5.06 when he was in service. Due to which he suffered lot of pecuniary loss etc to considerable extent.

On the basis of which I am of considered view that compensation of Rs. 50,000/- (Fifty thousand only) by way of damages as compensation to the workman/claimant by management after expiry of period of limitation of available remedy against Award . That will meet the ends of justice.

Thus reference is accordingly decided in favour of workman and against management .

Award is accordingly passed.

Dated:-14/03/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 16 जुलाई, 2014

का.आ. 2050.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हादोती क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 30/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2014 को प्राप्त हुआ था।

[सं. एल–12011/30/2013–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, 16th July, 2014

S.O. 2050.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref 30/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of Hadoti Kshetriya Gramin Bank and their workmen, received by the Central Government on 30/06/2014.

[No. L-12011/30/2013-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

Presiding Officer, Bharat Pandey

I.D. 30/2013

Reference No.L-12011/30/2013-IR(B-I)) dated: 21.6.2013

The President/Mahamantri
Hadoti Kshetriya Gramin Bank
Karmachari Union,
Office Add: 5 F 12, Talvandi,
Kota (Rajasthan).

V/s.

The Administrative Officer/President
Baroda Kshetriya Gramin Bank
City Plaza, 1st Floor, Vaishali Nagar,
Ajmer (Rajasthan).

AWARD

Dated: 06.5.2014

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

> " Whether the action of the Management of Hadoti Kshetriya Gramin bank over stoppage of three increments with cumulative effect for three years of Sh. Ganesh Lal Bundel, clerk-cum-Cashier is legal & justified? If not, to what relief the workman concerned is entitled for?"

2. In pursuance of reference order, registered notices were sent to both the parties as per address contained in reference order. Opposite party has been served with notice but there has been no appearance on behalf of opposite party till date. Notice sent to applicant union on 27.9.2013 was returned back by postal department with endorsement that information has been given to the postman that addressee has left the place of residence hence it is returned back to sender. Finding the above state of service of notice, another notice was sent to the applicant on address mentioned in the reference order. It was again returned back with the same endorsement dated 12.4.2014 made by postal department.

3. No other known address appeared suitable & proper to make effective service against the applicant union & notices send twice as given in reference have served no purpose to make effective service. It is important to note that in reference order dated 21.6.2013 applicant was directed by Ministry to file statement of claim complete with relevant documents & list of witnesses in the tribunal within 15 days from the receipt of the reference order forwarding copy of such statement to opposite parties but in compliance of that order too applicant has not filed any statement of claim. Under these circumstances, the reference order under adjudication cannot be adjudicated on merits, hence " No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

4. Award as above.

5. Let a copy of the award be sent to Central Government for publication u/s 17(1) of the I.D.Act.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 16 जुलाई, 2014

का.आ. 2051.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई. एन. जी. वैश्य बैंक लि. प्रबंधतंत्र के संबद्ध नियोजकों और उनके

कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 26/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 30/06/2014 को प्राप्त हुआ था।

[सं. एल–12012/02/2013–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, 16th July 2014

S.O. 2051.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref 26/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the management of ING Vysha Bank Limited and their workmen, received by the Central Government on 30/06/2014.

[No. L-12012/02/2013-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/26/2013 Date: 23 .06.2014.

Party No.1 : The Branch Manager,
ING Vysya Bank Limited,
Satyam Apartment, Dhantoli,
Nagpur-440012.

Versus

Party No. 2 : Shri Gunwant,
S/O Shri Pandurangji Kakde,
Plot No.50, New Amar Nagar,
Near Prerna Vidya Mandir,
Manewada Ring Road,
Nagpur-440034.

AWARD

Dated: 23rd June, 2014

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of ING VYSYA Bank Limited and their workman, Shri Gunwant Kakde, for adjudication, as per letter No.L-22012/02/2013-IR (B-I) dated 20 .05.2013, with the following schedule:-

> "Whether the action of the management of ING Vysya Bank Limited, Nagpur in terminating the services of Shri Gunwant Kakde S/o Shri Pandurangaji Kakde, Ex. Peon w.e.f. 18.01.2012 is just, fair and legal? If not, then what relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Gunwant Kakde,('the workman" in short), filed the statement of claim.

It is necessary to mention here that notice of the reference was sent by registered post with A.D. to the management of ING Vysya Bank Limited ("Party No. 1" in short) and though the service of notice was sufficient, party No. 1 did not make any appearance. The reference was adjourned twice for filing of written statement by the party No.1, but party No.1 neither appeared nor filed their written statement, so, on 03.12.2013, order was passed to proceed with the case without written statement.

It is also necessary to mention here that as the party No.1 did not appear at all to take part in the hearing of the case, on 28.04.2014, order was passed to proceed ex-parte against the party No.1.

3. The case of the workman as presented in the statement of claim is that he was appointed as a peon on 03.08.2007 in the office of party No.1 at Nagpur and he served as such with an unblemished service record for 4 years 5 months and 15 days continuously without any interruption and party No.1 issued a certificate on 09.08.2010 in his favour, mentioning about his performance and conduct in the same and an identity card had also been issued by party no.1 in his favour, but party No.1 on 18.01.2012 orally terminated his services without assigning any reason thereof, after making payment of monthly wages of Rs. 5499/- to him and before termination of his services party No. neither issued any show cause notice or memo nor made any domestic enquiry against him.

It is further pleaded by the workman that before termination of his services, party No.1 neither issued one month's notice nor made payment of one month's wages in lieu of the notice nor the retrenchment compensation as required under section 25-F of the Act and the termination of his services was in violation of the provisions of Sections 25-F and 25-G of the Act and he served a notice dated 15.02.2012 on party No.1 for illegal termination of his services and requested for his reinstatement in service with continuity and all other consequential benefits and party No.1 in their reply dated 18.02.2012 claimed that he as never appointed by them and he was employed by one Shona Corporate Services Pvt. Ltd. and there was no question of his reinstatement and as such he raised the dispute before the Asstt. Labour Commissioner (Central), Nagpur, but as the conciliation ended in failure, failure report was submitted to the Central Government by the Conciliation Officer and ultimately the reference has been made by the Government to this Tribunal for adjudication of the industrial dispute.

The workman has made prayer for his reinstatement in service with continuity, full back wages and consequential benefits.

4. To prove his case, the workman has examined himself as a witness, besides placing reliance on

documentary evidence. In his evidence on affidavit, the workman has reiterated the facts mentioned in the statement of claim.

The evidence of the workman remained unchallenged, as none appeared on behalf of the party no.1 to cross examine him.

5. At the time of argument it was submitted on behalf of the workman that the workman was appointed as a peon on 03.08.2007 by party no.1 and he worked for about 4 years 5 months and 15 days without any interruption and a certificate dated 09.08.2010 was also issued by party no.1, confirming his appointment as a peon and the workman was also issued with identity card dated 24.12.2011to perform the works relating to Reserve Bank of India and the said documents confirmed the relationship of master and servant between the party no.1 and the workman and on 18.01.2012 the workman was terminated from service orally without following the due procedure of law and neither one month's notice nor one month's pay in lieu of the notice nor retrenchment compensation was paid to the workman before termination of his services and such termination amounts to retrenchment from service and is illegal and as such, the workman is entitled for reinstatement in service with continuity, back wages and all consequential reliefs.

6. Admittedly, the case proceeded exparte against the party no.1. However, in view of the claim of the workman that his services were terminated without compliance of the provisions of Section 25-F of the Act, the burden lies upon him to plead and prove that infact he had worked for 240 days in the preceding 12 calendar months of the date of the alleged termination i.e. 18.01.2012.

On perusal of the record it is found that though the workman has claimed that he was appointed as a peon by party no.1 on 03.08.2007, he has not filed any appointment letter or any other document showing his appointment as a peon on 03.08.2007. On perusal of the zerox copy of the so called service certificate it is found that the same was issued on 09.08.2010 and the same was issued by the Branch Operations and Services Head, Nagpur Branch. The copy of the Identity card shows that the designation of the workman was "Office Boy" and the same was issued by the Reserve Bank of India i.e. National Clearing Cell. The said documents do not show that the workman worked for 240 days in the preceding 12 calendar months of 18.01.2012.

In the entire statement of claim, no where the workman has pleaded that infact he had worked for 240 days in the preceding 12 calendar months of 18.01.2012. In his evidence on affidavit also the workman has not whispered a single word about his working for 240 days in the preceding 12 calendar months of 18.01.2012.

7. The workman has filed some additional documents. Out of the said documents Annexure-IX is a zerox copy of the reply given by party no.1 to the workman dated 21.02.2012. The said letter shows that the workman was an employee of Shona Services, the contractor and he was engaged by the contractor with party no.1. Annexure-X filed by the workman shows that Shona Corporate Services Pvt. Ltd., the contractor had called for explanation from the workman for remaining absent from duty. Annexure-X also shows that the workman remained absent from duty from 16.01.2012 and thereafter did not resume duty. Annexure-IX & X clearly shows that the workman was engaged with party no.1 by the contractor Shona Corporate Services Pvt. Ltd. The documents filed by the workman do not show that infact he had worked for 240 days in the preceding 12 calendar months of 18.01.2012. In view of the failure of the workman that he worked for 240 days in the preceding year of the date of his termination, he is not entitled to get the benefit of Section 25-F of the Act.

As the evidence adduced by the workman doesn't show that the workman was appointed as a peon by party no.1 on 03.08.2007 and that he worked for 240 days in preceding 12 calendar months of 18.01.2012, the workman is not entitled for any relief. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 16 जुलाई, 2014

का.आ. 2052.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 54, 55, 56, 57, 63, 64 और 65/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल–41012/01, 02, 03, 07, 04, 05 और 06/2013–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, 16th July, 2014

S.O. 2052.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref . Nos. 54, 55, 56, 57, 63, 64 and 65/2013) of the Cent.Govt. Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Southern Railway, and their workmen, received by the Central Government on 04/7/2014.

[No. L-41012/01, 02, 03, 07, 04, 05 and 06/2013-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 23rd May, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

I.D. Nos. 54, 55, 56, 57, 63, 64 and 65 of 2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Southern Railway and their workman)

BETWEEN

Sri K. Krishnamurthy & 6 Others : 1st Party/Petitioners

AND

The General Manager (Law) : 2nd Party/Respondent
Southern Railway
Moore Market Complex
Chennai-600003

S. No.	I. D. No.	Reference No. & Date	Name of the I Party S/Sri	Name of the II Party	Appearance for Workman	Appearance for Respondent
1.	54/2013	L-41012/01/2013-IR (B-I) dt. 17.05.2013	K. Krishnamurthy	The General Manager (Law) Southern Railway Chennai-3	M/s S.T. Varadarajulu, Advocate	Sri K. V. Sanjeev Kumar, Advocate
2.	55/2013	L-41012/02/2013-IR (B-I) dt. 20.05.2013	C. Kuppusamy	The General Manager (Law) Southern Railway Chennai-3	M/s S.T. Varadarajulu, Advocate	Sri K. V. Sanjeev Kumar, Advocate
3.	56/2013	L-41012/03/2013-IR (B-I) dt. 21.05.2013	P. Ravichandran	The General Manager (Law) Southern Railway Chennai-3	M/s S.T. Varadarajulu, Advocate	Sri K. V. Sanjeev Kumar, Advocate
4.	57/2013	L-41012/07/2013-IR (B-I) dt. 16.05.2013	M. Velu	The General Manager (Law) Southern Railway Chennai-3	M/s S.T. Varadarajulu, Advocate	Sri K. V. Sanjeev Kumar, Advocate
5.	63/2013	L-41012/04/2013-IR (B-I) dt. 21.05.2013	C. S. Arumugam	The General Manager (Law) Southern Railway Chennai-3	M/s S.T. Varadarajulu, Advocate	Sri K. V. Sanjeev Kumar, Advocate
6.	64/2013	L-41012/05/2013-IR (B-I) dt. 21.05.2013	M. Chellappan	The General Manager (Law) Southern Railway Chennai-3	M/s S.T. Varadarajulu, Advocate	Sri K. V. Sanjeev Kumar, Advocate
7.	65/2013	L-41012/06/2013-IR (B-I) dt. 27.05.2013	K. Macharegai	The General Manager (Law) Southern Railway Chennai-3	M/s S.T. Varadarajulu, Advocate	Sri K. V. Sanjeev Kumar, Advocate

COMMON AWARD

The Central Government, Ministry of Labour & Employment vide the above order of references referred the IDs mentioned above to this Tribunal for adjudication.

2. The schedule mentioned in the orders of reference in the above IDs are as under:

ID 54/2013

"*Whether the action of the Railway Management-Southern Railway, Chennai regarding termination of the service of the petitioner K. Krishnamurthy without following the provisions of Section-2(OO) and 25(F) of the ID Act is justified or not? If not, to what relief the workman is entitled to?"*

ID 55/2013

"Whether the action of the Railway Management-Southern Railway, Chennai regarding termination of the service of the petitioner C. Kuppusamy without following the provisions of Section 2(OO) and 25(F) of the ID Act is justified or not? If not, what relief the workman is entitled?"

ID 56/2013

"Whether the action of the Railway Management-Southern Railway, Chennai regarding termination of the service of the petitioner P. Ravichandran without following the provisions of Section 2(OO) and 25(F) of the ID Act is justified or not? If not, what relief the workman is entitled?"

ID 57/2013

"Whether the action of the Railway Management-Southern Railway, Chennai regarding termination of the service of the petitioner M. Velu without following the provisions of Section 2(OO) and 25(F) of the ID Act is justified or not? If not, what relief the workman is entitled?"

ID 63/2013

"Whether the action of the Railway Management-Southern Railway, Chennai regarding termination of the service of the petitioner C.S. Arumugam without following the provisions of Section 2(OO) and 25(F) of the ID Act is justified or not? If not, what relief the workman is entitled?"

ID 64/2013

"Whether the action of the Railway Management-Southern Railway, Chennai regarding termination of the service of the petitioner M. Chellappan without following the provisions of Section 2(OO) and 25(F) of the ID Act is justified or not? If not, what relief the workman is entitled?"

ID 65/2013

"Whether the action of the Railway Management-Southern Railway, Chennai regarding termination of the service of the petitioner K. Macharegai without following the provisions of Section 2(OO) and 25(F) of the ID Act is justified or not? If not, what relief the workman is entitled?"

3. On receipt of the Industrial Dispute this Tribunal has numbered them and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

4. The averments in the Claim Statement in ID 54/2013 in brief are these:

The petitioner joined the service of the Respondent as Box Boy on 07.02.1994 on salary of Rs. 600/-. He was working under the Chief Controller of AC Loco Shed, Jolarpet, Southern Railway. The petitioner was engaged against the regular vacancy which arose on account of regular railway servants having retired from service. Since the petitioner was engaged in regular vacancy he was entitled to the benefit of monthly salary of Rs. 750/- plus Dearness Allowance from the date of initial recruitment. He was entitled to absorption against the vacancy on completion of 240 days of continuous service. The petitioner was continuously employed since 07.02.1994. However, he was unjustly denied employment from 03.11.1995. The petitioner had put in more than 240 days of service in a year. Terminating the services of the petitioner without any valid reason is retrenchment as per Section-2(oo) of the Industrial Disputes Act. The petitioner was not given any retrenchment notice or paid any compensation. The petitioner is without any employment after 03.11.1995. An order may be passed directing the Respondent to reinstate the petitioner in service with back wages and continuity of service alongwith attendant benefits.

5. The Respondent has filed Counter Statement contending as follows:

The claim made by the petitioner is not maintainable. It is an abuse of the process of law. The petitioner was not appointed by the Respondent. No appointment can be made directly by the Chief Controller as claimed by the petitioner. All the appointments under the Railway Administration will be made by the Railway Board. No other authority has any power to appoint any person in the Railway. Since the petitioner was not appointed on monthly salary there was no termination also. There is no employer-employee between the petitioner and the Respondent. The petitioner is not entitled to any relief.

6. The petitioners in ID 55/2013, 56/2013, 57/2013, 63/2013, 64/2013 and 65/2013 also have filed Claim Statements raising contentions similar to the one raised by the petitioner in ID 54/2013. All of them have stated

that they have joined in the service of the Respondent as Box Boy on 07.02.1994 and had been terminated from service after sometime. All of them have claimed that they were appointed in regular vacancy and they had worked for more than 240 days in a year. All these petitioners have also claimed that they are entitled to be reinstated in the service of the Respondent. The Respondent has filed Counter Statement in all these IDs repeating the contentions in the ID 54/2013. Their stand is that none of these petitioners were ever appointed by the Respondent, they were never in the service of the Respondent and there is no employer-employee relationship between them and the Respondent.

7. The contentions raised in all the IDs being similar in nature and the issue to be decided being similar the parties have filed memo seeking joint trial of all the IDs and this was allowed.

8. ID 54/2013 was treated as the main case and evidence was recorded in this. On the side of the petitioners, WW1 and WW2 were examined and Ext.W1 to Ext.W7 were marked. MW1 was examined on the side of the Respondent.

9. **The points for consideration in the above petitions are**:

(i) Whether the Respondent had terminated the service of the petitioners in violation of the provisions of the ID Act?

(ii) To what relief the petitioners are entitled?

The Points

10. Before approaching this Tribunal the petitioners have approached other forums seeking relief for their grievances. They have filed a Claim Petition before the Central Govt. Labour Court under Section-33((2) of the ID Act claiming amount by way of difference in the wages. Ext.W2 is the order directing the Respondent to pay the difference to each of the petitioners. The Respondent had challenged this order by Writ Petition before High Court of Madras and the order was set aside. The petitioners seem to have filed application for reinstatement also before the Labour Court, Chennai alleging that their services were terminated without obtaining sanction from the Competent Authority under Section-33 of the ID Act. The Court had denied the relief of reinstatement to the petitioners but had directed to pay compensation of Rs. 1,00,000/- to each of the petitioners. These were challenged by the Respondent as well as the petitioners. The writ petitions of the Respondent were allowed and that of the petitioners were dismissed finding that their petitions before the Labour Court were not maintainable. Ext.W6 is the copy of the common order. It is after the adverse order of the Hon'ble High Court the petitioners have raised the dispute. Conciliation having ended up in failure, a failure report was given and the Government had referred all the matters to this Court for adjudication.

11. The petitioner in ID 64/2013 has given evidence as WW1 for himself and on behalf of other petitioners. WW2 examined by the petitioners is one who had been working as mail driver and had retired from service. There is the evidence given by WW1 that he had joined the service of the Respondent on 07.02.1994 as Box Boy and had been terminated from service on 03.11.1995. WW2 has stated in the Proof Affidavit filed by him in lieu of Chief Examination that the petitioners were in the service of the Respondent as Box Boys since February 1984 under the Chief Controller of AC Loco Shed, Jolarpet.

12. Though it is claimed by all the petitioners that they have joined the service of the Respondent on 07.02.1994, there is no document available showing that they were appointed by the Respondent in this capacity. The case of the Respondent is that there is no post of Box Boy at all in the Railway. The petitioners have claimed that earlier there used to be regular Box Boy under the Railway and when they have retired from service, the petitioners were engaged by the Respondent. There is no documentary evidence available even to show that the Respondent had the post of Box Boy.

13. WW1 has stated during his cross-examination that he has not produced any appointment order. According to him, on 03.11.1995 he was told that the Respondent will thereafter be giving the work on contract. Though in the Claim Statement the case of WW1 is that he worked till 03.11.1995, during his cross-examination his case is that he continued to work for the Respondent after 03.11.1995 for some time and then left since the remuneration was not sufficient. Though WW2 has stated in the Affidavit that the petitioners were working as Box Boys, he had admitted during his cross-examination that the petitioners had never worked for him. Apart from this, it is also seen from the version of this witness in cross-examination, that petitioners were not working in the Division where WW2 was working at all. The case of the petitioners is that they were working at Jolarpet, WW2 had been working at Trichirapally and Madras Divisions. He has also revealed that Trichirapally and Jolarpet are two separate divisions. So in the normal course there was no necessity for WW1 to have the details of the work, if any, done by the petitioners. Again according to WW2, though the petitioners initially worked under Railways, subsequently they had worked under the Contractors.

14. The counsel for the petitioners has been relying upon Ex.W2, the remarks submitted by the Respondent before the Asstt. Labour Commissioner (C) for the purpose of conciliation. In this it has been stated that with the end of reducing manpower some of the activities which do not constitute employment of full time persons have been shed down. It is further stated that one such area is loading and unloading of boxes of such categories of staff such as Loco Drivers, Guards and Travelling Ticket Examiners. It is further stated in this that the crew who are travelling

alongwith the train such as Drivers, Guards and TTs are required to carry their boxes containing the official documents and other paraphrenelia and since it was not possible for the individual employee to carry his own box or to make arrangements for the boxes to be lifted, the Station Superintendent or the Supervisory Official concerned used to engage some person who is available in the vicinity to undertake this job on payment of piece rate to be settled between them. Such persons were engaged in intervals for a few minutes at the time of boarding the train to load or unload the boxes for a specified remuneration. It is further stated that no account of this expenditure was maintained as it was spent from the imprest cash sanctioned to the supervisory official. Records of persons so engaged are also not available, it is stated. It is also stated that in the absence of any records, the Respondent could not even state whether the petitioners were ever engaged for the purpose of loading or unloading the boxes.

15. On the basis of the above remarks made in Ext.W1 it has been argued by the counsel for the petitioners that the Respondent has been engaging persons as Box Boys. True, there is a statement in Ex.W1 that as and when required men used to be engaged for carrying the boxes. However, according to the Respondent this was just like a porter was engaged by a passenger to carry his luggage and the work was just for a few minutes alone for carrying the boxes to the train or back from the train. It was not a work of stable nature and the engagement was not to particular persons also. Thus, there is nothing in Ext.W1 by way of admission that the petitioners were ever engaged as Box Boys and they were working in this capacity continuously. The petitioner themselves were not able to produce even a scrap of paper to show that they were ever engaged by the Respondent. Not even any documents pertaining to payments said to have been made to them are produced. So apart from the statement made by the petitioners in their Claim Statement and assertion by WW1 in his affidavit there is no evidence at all to show that any of the petitioners were engaged by the Respondent from 07.02.1994 as claimed by them and continued in service till 03.11.1995 on which date they were allegedly terminated. There is no document pertaining to alleged termination also. So material are totally lacking to show that the petitioners were working for the Respondent continuously from 07.02.1994 as claimed by them.

16. Even if the petitioner were working in the capacity claimed by them it seems to have been as contract labourers. I have already referred to the evidence given by WW1 that he continued to work with the Respondent after 03.11.1995. This itself gives a goby to the case in the Claim Statement that he was terminated on 03.11.1995. Ex.W3 are the complaints filed by the petitioners before the Central Government Labour Court, Chennai under Section-33A of the I.D. Act. What is stated in these complaints is that they had earlier approached the Court for benefits of differences in wages, mode of payment, compensatory and other allowances and for abolition of the work of regular nature to private contractor. It is further stated in the complaint that the services of these petitioners were terminated by the private contractor without obtaining sanction from the competent authority under Section-33 of the I.D. Act. Thus there is an admission in these complaints that they were working for the Respondent through private contractors when their services were terminated. On the other hand in the Claim Statements filed before this Court the petitioners were silent about the contractual nature of the work done by them. Their claim is that they were directly employed by the Respondent and were terminated by the Respondent also. This seems to be not true when the statement made in the complaints are taken into account.

17. The Central Govt. Labour Court, Chennai had directed payment of differences in wages to the petitioners. There also the petitioners have not produced any documents. The Court had drawn adverse inference against the Respondent for not producing any documents that were sought by the petitioners. The Respondent had challenged the order by Writ Petition No. 1857/2000 while allowing the writ petition and setting aside the order of the Labour Court the High Court has observed that when the very case of the Respondent was that the petitioners were never engaged by the Respondent it was wrong on the part of the Court to draw such adverse inference. The petitioners having approached this Court claiming the relief it was upon them to produce sufficient material to prove that they were engaged by the Respondent and were subsequently terminated. There cannot be an assumption that they might have been engaged by the Respondent. In the absence of any such material establishing the case of the petitioners they are not entitled to the relief of reinstatement claimed by them. They are not entitled to any other reliefs also.

18. In view of my findings above, all the references are answered against the petitioners. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 23rd May, 2014)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioners	:	WW1, Sri M. Chellappan WW2, Sri V.P. Stalin
For the 2nd Party/ Management	:	MW1, Smt. M. Sunitha

Documents Marked

On the Petitioner's side

Ex. No.	Date	Description
Ex.W1	27.08.1996	Remarks submitted by the Respondent before the ACL (Central)
Ex.W2	29.11.1999	Order passed in CP No. 25 of 1995
Ex.W3	28.08.2000	Complaint filed by the petitioners
Ex.W4	2002	Counter filed in the complaint by Opposite Party
Ex.W5	29.11.2008	Award passed in complaints
Ex.W6	19.07.2011	Order in WP No. 6231-6237 of 2009
Ex.W7	18.12.2012	Failure Report

On the Management's side

Ex. No.	Date	Description
Nil		

नई दिल्ली, 16 जुलाई, 2014

का.आ. 2053.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 15/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल–12012/01/2014–आईआर (बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, 16th July 2014

S.O. 2053.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Channai as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12011/01/2014-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Monday, the 21st April, 2014

Present : K. P. PRASANNA KUMARI,
Presiding Officer

Industrial Dispute No. 15/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of State Bank of India and their workman]

Between :

Smt. Shanthi Umapathy : 1st Party/Petitioner

AND

The Dy. General Manager, State Bank of India
Industrial Finance Branch
No. 155, Anna Salai
Chennai-600002 : 2nd Party/Respondent

APPEARANCE :

For the 1st Party/Petitioner : M/s Balan Haridas, Advocates

For the 2nd Party/Management : M/s T. S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/01/2014-IR (B-I) dated 03.03.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of State Bank of India, Industrial Finance Branch, 155, Anna Salai, Chennai-2 in terminating the service of Smt. Shanti Umapathy, Assistant is legal and justified? To what relief the concerned workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as I.D. No. 15/2014 and issued notices to both sides. The parties have entered appearance on receipt of notice.

3. The petitioner has filed a memo stating that she is not intending to prosecute the matter. It is seen from the memo that she has already filed the petition before this Court directly, challenging the order of the Respondent Bank terminating her from service. The said ID has been numbered as ID 4/2014 and the same is pending before this Court. The petitioner has stated in the memo that she

is intending to proceed with ID 4/2014 and does not want to proceed with this ID. So it is only proper that ID is closed.

4. Therefore, the ID is closed. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st April, 2014)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked

On the Petitioner's side

Ex. No.	Date	Description
Nil		

On the Management's side

Ex.No.	Date	Description
Nil		

नई दिल्ली, 16 जुलाई, 2014

का.आ. 2054.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 43/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/07/2014 को प्राप्त हुआ था।

[सं. एल–12012/218/2004–आईआर(बी–I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, 16th July, 2014

S.O. 2054.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2005) of the Cent. Govt. Indus.Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 04/07/2014.

[No. L-12012/218/2004-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Present : K.B. KATAKE, Presiding Officer

REFERENCE No. CGIT-2/43 of 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF STATE BANK OF INDIA

The Assistant General Manager (OAD),
State Bank of India
Central Office, (Office Admin. Department)
National Building Group
New Admin. Building Plot Nos. 8, 9 & 10,
Sector-11,
CBD Belapur,
Navi Mumbai 400 614.

AND

THEIR WORKMEN

State Bank of India Staff Union (Mumbai Circle)
C/o. U.P. Naik
68/86, Harkoovarbai Building
Pandit Bakhale Path
Thakurdwar Road,
Mumbai 400 002.

APPEARANCES:

FOR THE EMPLOYER : Mr. M. G. Nadkarni, Advocate

FOR THE WORKMEN : M. B. Anchan, Advocate

Mumbai, dated the 2nd April, 2014.

AWARD PART - II

The Government of India, Ministry of Labour& Employment by its Order No.L-12012/218/2004-IR (B-I), dated 03.01.2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of State Bank of India (Office Administration Department), CBD Belapur, Navi Mumbai in terminating the services of Shri M.K.Nair, Sr. Assistant by way of "Removal of Services" of the bank vide punishment Order dated 3/7/2003 is justified, legal and in proportion to the alleged charges of misconduct? If not, to what relief the concerned workman is entitled to?"

2. In the Part-I Award the preliminary issues were decided in favour of the first party. It was held that the inquiry was fair and proper. So also the findings of the I.O. were found not perverse. Therefore in this Part-II Award following are the remaining issues for my

determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
3.	Whether misconduct alleged is proved against concerned workman?	Yes
4.	Whether punishment under challenge is just and proportionate?	Yes
5.	Is workman entitled for any relief ?	No
6.	What order?	As per final order

REASONS

Issue No. 3 :

3. The Inquiry Officer on the basis of documentary evidence and the entries in the accounts books as well as on the basis of explanation in respect of the two cheques deposited in the joint account of workman arrived at the conclusion that these misconducts of opening the account without prior authorisation from the Bank and depositing these two cheques of Rs.7,85,000/- and Rs.6,11,250/- respectively were proved against the workman. Except one charge the I.O. held that the rest of the four charges were proved. The findings of the Inquiry Officer were based on the documents, entries in the account books as well as non-denial of the facts by the workman. Therefore this Tribunal while deciding issue no.2 in Part-I Award held that findings of the I.O. are not perverse as they are based on cogent evidence on record. The entries made in the account books during the course of business can very well be read in evidence as prescribed under Section 34 of the Evidence Act as well as entries in the Bank Account books are also read in evidence without any proof under Banking Evidence Act. In the circumstances as findings of the IO in respect of the two misconducts held not perverse, I hold that the alleged misconducts are proved against the workman concerned. Accordingly, I decide this issue no.3 in the affirmative.

Issues Nos. 4 & 5 :

4. On the point it was submitted on behalf of the workman that he was implicated in the case falsely. Police have dropped the inquiry against him. CBI Officer has also not taken any action against the second party workman as there was no evidence against him. Therefore it is submitted that punishment of removal from service is shockingly disproportionate. It is further contended that the young age and future tenure of service of the workman also should be taken into account while awarding such a harsh punishment.

5. In this respect I would like to point out that, dropping of inquiry by Police and not implicating the workman by CBI does not extend any help as workman was found guilty by the Inquiry Officer and findings of the I.O. in the inquiry proceedings were upheld in Part-I Award passed by this Tribunal.

6. In respect of young age and the length of service and previous conduct of the workman, the Ld. Adv. for the first party submitted that the workman was found guilty of serious misconduct. The misconduct of opening joint account without prior authorisation and depositing stolen cheques of huge amounts to the tune of Rs.6,11,000/- & Rs.7,85,000/- are no doubt grave & serious misconducts besides canvassing colleagues and others to invest money in some other institutions. He was also charge-sheeted for collecting amounts from colleagues and some outsiders by giving them false promise to pay interest at a higher rate. In this respect it was also pointed out on behalf of the workman that Bank has not sustained any monetary loss as both the cheques were dishonoured. In this respect the Ld. Adv. for the first party submitted that when the misconduct is of grave nature, the defence of no loss to the Bank or profit to the workman is not available to the second party workman. In support of his argument the Ld. Adv. resorted to Apex Court ruling in State Bank of India & Anr V/s. Bela Bagchi & Ors. 2005 (7) SCC 435 wherein in para 15 of the judgement the Hon'ble Apex Court observed that;

> "As was observed by this court in Disciplinary Authority-cum-Regional Manager V/s Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance."

7. In this respect the Ld. Adv. for the first party submitted that the second party workman was found guilty for grave misconduct. The allegations against him were that he had opened joint secret account in his and his wife's name and had deposited two stolen cheques of huge amounts one more than Rs.6 lakhs and the other more than Rs.8 lakhs and tried to misappropriate huge amounts. According to the Ld. Adv. being employee of the Bank, his conduct was expected of high moral standard. In support of his argument the Ld. Adv. resorted to Apex Court ruling in Union Bank of India V/s. Vishwa Mohan (1998) Lab IC 2514 wherein the Hon'ble Apex Court in respect of the quality of Bank employee in para 11 of the judgement observed that;

> "It needs to be emphasised that in the Banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the Bank officer. If this is not observed, the confidence of the public depositors would be impaired."

8. The Ld. Adv. for the first party further submitted that once the misconduct is proved, it is the discretion of the disciplinary authority to award appropriate punishment and the Tribunal or Court need not interfere therein. In support of his argument Ld. Adv. resorted to the Apex Court ruling in N. Rajarathinam V/s. State of Tamil Nadu & Anr. (1996) 10 SCC 371 wherein the Hon'ble Court observed that;

> "Once there is a finding as regards the proof of misconduct, what should be the nature of punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts keeping in view the discipline in the service."

9. On the same point Ld. Adv. also cited Apex Court ruling in State Bank of Mysore V/s. M.C.Krishnappa (2011) 7 SCC 325 wherein the Hon'ble Court observed that;

> "It is well settled that punishment is primarily a function of the management and the courts rarely interfere with the quantum of punishment."

10. Ld. Adv. for the first party in support of his argument also cited number of rulings. It would be unnecessary to discuss them in detail. I am citing those rulings which support the case of the first party. Those rulings are:

1. Regional Manager, Rajasthan State Road Transport Corporation V/s. Sohan Lal 2004 (8) SCC 218.
2. Management of Digwadih Colliery Tata Iron and Steel Co. Ltd. V/s. Ramji Singh 1964 (2) LLJ 143.
3. Suresh Pathrella V/s. Oriental Bank of Commerce 2006 (10) SCC 572.
4. Janatha Bazar South Kanara Central Co-op. Wholesale Stores Ltd & Ors. V/s. Secretary, Sahakari Noukarana Sangh & Ors. 2000 II LLJ 1395.
5. State Bank of Bikaner and Jaipur V/s. Nemi Chand Nalwaya 2011 (4) SCC 584.
6. Ganesh Santa Ram Sirur V/s. State Bank of India & Anr. AIR 2005 SC 314.
7. Municipal Committee, Bahadurgarh V/s. Krishna Behari & Ors. AIR 1996 SC 1249.

11. In the case at hand the second party workman was found guilty for grave misconduct. He was a Bank employee and he was expected absolute devotion, diligence, integrity and honesty in performing his duties as has been observed by Hon'ble Apex Court in the ruling of Union Bank of India V/s. Vishwa Mohan. Furthermore the workman is not fit to continue with the service of Bank as management has lost confidence in him. In the light of above rulings and the rulings cited by Ld. Adv. enlisted above and considering the nature of misconduct discussed herein above conclusion can be arrived at that the order of punishment of removal from service cannot be said shockingly disproportionate. Thus it needs no interference. Hence, I decide this issue no. 4 in the affirmative and issue no. 5 in the negative and proceed to pass the following order:

ORDER

The reference stands rejected with no order as to cost.

Date: 02/04/2014

K. B. KATAKE, Presiding Officer

Printed by the Manager, Government of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054.